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SITUATION OF HUMAN RIGHTS IN THE TERRITORY OF THE FORMER YUGOSLAVIA

Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz Mazowiecki, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1992/S-1/1 of 14 August 1992

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I. INTRODUCTION

A. Activities of the Special Rapporteur

1. At its first special session, the Commission on Human Rights adopted resolution 1992/S-1/1 of 14 August 1992 in which it requested its Chairman to appoint a special rapporteur to investigate first hand the human rights situation in the territory of the former Yugoslavia.

2. At its second special session, the Commission on Human Rights adopted resolution 1992/S-2/1 of 1 December 1992, by which it, inter alia, requested the Special Rapporteur "to continue his efforts, especially by carrying out such further missions to the former Yugoslavia as he deemed necessary ...".

3. Since his appointment the Special Rapporteur has conducted three missions to the former Yugoslavia and has submitted the following reports: report of the Special Rapporteur to the Commission on Human Rights of 28 August 1992 (E/CN.4/1992/S-1/9), hereafter referred to as the "first report"; report to the Commission on Human Rights of 27 October 1992 (E/CN.4/1992/S-1/10), hereafter the "second report", and his report to the forty-seventh session of the General Assembly (A/47/666-S/24809), hereafter the "third report".

4. During his third mission the Special Rapporteur visited Slovenia, Macedonia and Croatia from 10 to 17 January 1993. This mission is further discussed in the relevant chapters below.

5. In December 1992 and January 1993, two other missions to the territory of the former Yugoslavia were conducted within the framework of the Special Rapporteur's mandate to investigate the human rights situation there.

6. The Special Rapporteur requested the Special Rapporteur on extrajudicial, summary or arbitrary executions to carry out a preliminary investigation into allegations that victims of war crimes are to be found in certain mass graves in the former Yugoslavia. The mission was carried out from 15 to 20 December 1992 with the participation of a forensic expert to assess the extent to which these allegations are prima facie reliable (see annex I). As agreed by the Special Rapporteur and the Commission of Experts established pursuant to Security Council resolution 780 (1992), the results of the preliminary inquiry have been forwarded to the Commission for in-depth investigation. More generally, the Special Rapporteur shares with the Commission any information he receives which is of relevance to its mandate.

7. A mission to investigate allegations of the widespread occurrence of rape, particularly in relation to Bosnia and Herzegovina, was conducted from 12 to 23 January 1993, in parallel to the Special Rapporteur's visit. A team of four medical and psychiatric experts, accompanied by the Director of the United Nations Division for the Advancement of Women and staff of the Centre for Human Rights visited Croatia, Bosnia and Herzegovina and the Federal Republic of Yugoslavia (Serbia and Montenegro) to collect and analyse the testimony of victims and witnesses as well as related statistical data and medical records (see annex II).

8. In addition to his missions the Special Rapporteur has conducted several other visits and discussions with political leaders which aimed at promoting understanding of the human rights problems in the former Yugoslavia. He has made statements to the Security Council and to the General Assembly. He also participated in the extraordinary meeting of the Islamic Conference in Jeddah on 1 and 2 December 1992.

B. Collection of information

9. A great deal of the evidence of human rights abuses has been gathered on missions. Apart from that, more and more testimony is emerging which documents violations of human rights, providing convincing and verifiable detail and naming the names of those responsible. A substantial proportion of the documentation received by the Special Rapporteur is from Governments which are not party to the conflict, intergovernmental agencies and missions as well as other United Nations bodies. This report, due to limitations of space, refers to only a fraction of the allegations received by the Special Rapporteur.

10. The Special Rapporteur also receives large amounts of documentation from sources whose objectivity is difficult to confirm and which needs corroboration from disinterested sources.

11. Interviews with refugees after they have fled the territory where their human rights were violated provide very valuable information. In the coming months, and particularly as hundreds of thousands of applications for asylum are considered all over Europe, this evidence will mount. The Special Rapporteur intends to establish direct contact with the governmental and non-governmental organizations which assist refugees, or process applications for asylum, in order to systematize the flow of information which is emerging from their testimonies.

12. However, the Special Rapporteur, in accordance with his mandate to investigate the human rights situation in the territory of the former Yugoslavia, remains convinced that investigations must be conducted in that territory to assemble a more complete picture. The presence of field officers would provide the Special Rapporteur with information in a more systematic manner and enable him to act more rapidly against violations. The assessment of the credibility of allegations is an ongoing process and is an important aspect of the work envisaged for the Special Rapporteur's field officers.

13. The Special Rapporteur notes the encouraging work being undertaken in very difficult circumstances by local non-governmental organizations in all parts of the former Yugoslavia. As a rule, they are making valiant efforts to document human rights abuses and war crimes in an independent, objective manner. For many such bodies the task is not easy in a prevailing climate of propaganda, misinformation and incitement to hatred. The Special Rapporteur encourages such independent work and hopes to expand his contact with those organizations through the operations of his field staff.

14. The Special Rapporteur's appreciation is once again due for the invaluable support and cooperation which he has received from his fellow Special Rapporteurs. In this connection, he wishes to thank

Mr. Bacre Waly Ndiaye, Special Rapporteur on extrajudicial, summary or arbitrary executions, for having agreed to carry out the above-mentioned mission to Croatia.

15. The Special Rapporteur would also like to take this opportunity to express his appreciation for the cooperation he has received from the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Protection Force (UNPROFOR), the International Committee of the Red Cross (ICRC), the European Community Monitoring Missions, missions of the Conference on Security and Cooperation in Europe (CSCE), other international agencies and non-governmental organizations, both in Geneva and in the field.

II. BOSNIA AND HERZEGOVINA

A. General observations regarding ethnic cleansing

16. Massive violations of human rights and international humanitarian law are not simply features of the war in Bosnia and Herzegovina. They are being used deliberately to achieve ethnically homogenous areas.

17. In his first report the Special Rapporteur emphasized the variety of methods used in ethnic cleansing: replacement by extremists of those elected representatives who refused to cooperate with ethnic cleansing, harassment, discrimination, beatings, torture, summary executions, expulsions, forced crossing of the confrontation line, confiscation of property, dismissal from work, intimidation, destruction of mosques, use of the siege and cutting off supplies of food and other essentials to civilian population centres. The report drew on the experience of the city and region of Bihac as well as Bosanska Dubica, Celinac, Sanski Most and Sarajevo.

18. In his second report the Special Rapporteur described ethnic cleansing in and around Bosanski Novi, Prijedor, Doboj, Kotor Varos, Travnik and conditions in Trnopolje.

19. In his third report the Special Rapporteur illustrated the deliberate and methodical character of ethnic cleansing carried out by Serb forces in and around the Prijedor area where the aim of this policy had largely been accomplished (paras. 17-19).

20. In the present report the Special Rapporteur presents accounts and testimonies which are characteristic of the information which is increasingly becoming available from refugees regarding the systematic nature of ethnic cleansing as well as the human rights and humanitarian law violations. They show the methods by which a violent change in the demographic map of Bosnia and Herzegovina has been achieved, leaving 810,000 people displaced internally and 700,000 refugees in other countries formerly part of Yugoslavia.

21. It is now estimated that two thirds of Bosnia and Herzegovina is under the control of Serb forces, leaving some of the central area, three enclaves in the east and the north-western area of Bihac in the control of government forces.

22. The Special Rapporteur would like to emphasize that not only Croats and Muslims are the victims of ethnic cleansing; Serbs who refuse to cooperate with this policy have also been victimized. There are reports of the arbitrary execution of such Serbs, for example in Teslic on 2 June 1992 when three Serbs were reportedly killed for refusing to cooperate with the Yugoslav National Peoples' Army (JNA) and Serbian Democratic Party militia in persecuting Muslims and Croats. It has also been reported that the Serbian Neskovic family, accused of hiding Muslims, as well as a commander of the Serbian police were killed because they opposed the killing of Muslims in Bratunac and the surrounding area.

23. Ukrainians in the Banja Luka region were reportedly subjected to psychological pressure which included the blowing up of the Ukrainian church

in Prnjavor, the destruction of the old church in Dubrava and of a village church near Omarska. The homes of Ukrainians were regularly shot at and they were repeatedly asked: "When are you planning to leave, you Ukrainians?". It is reported that by August 1992, all 1,100 of them had decided to do so.

24. Over and over again in their testimonies, witnesses express their incomprehension at what has happened between neighbours who previously had not made distinctions based on nationality. In January 1993, the Special Rapporteur met a Muslim man and his two daughters in the Croat refugee camp at Reznik, near Zagreb. They came from Prijedor and had fled only a few days previously. This man's testimony speaks for very many:

> "In Prijedor, there were no conflicts between nationalities. We didn't make the distinction. My colleague at work was an Orthodox Serb, we worked together. When we were children we went to the Orthodox church or to the mosque together. I don't understand. Before there were never any problems between us. We lived together. My sister is married to a Serb and a brother of my wife is married to a Croat. [In June 1992 the family was detained by ethnic Serb forces.] We were in Tronopolje camp for five days. It was horrible. There, one of the Serb guards [who had been the father's work colleague] recognized us and got us out. Some of them help us, others kill us."

25. A well-orchestrated campaign of intimidation of Muslims and Croats in places under the control of Serb forces is reportedly continuing the policy of ethnic cleansing up to the present time. The Banja Luka and Prijedor areas may be regarded as illustrative. In Banja Luka, Muslims and Croats are reportedly dismissed by employers, evicted from premises which the employer owns and receive official notices that their "protection" has expired. They are harassed on the telephone and their property damaged.

26. Prijedor used to have a population of 120,000 of whom approximately 65,000 were Muslims and 10,000 were Croats. Today it is estimated that there are only 10,000 Muslims and Croats left and it is reported that, to all intents and purposes, those remaining desperately wish to leave. While visiting the refugee centre at Reznik, the Special Rapporteur himself heard, from refugees who had fled Prijedor only days previously, how life there had become impossible: "We were threatened by neighbours. Fear reigns in Prijedor". They were unable, as Muslims, to find work, intimidated and terrorized on the streets, afraid to use local restaurants, had their homes destroyed and were bereft of their old community of friends and relatives. One family, which had arrived in Croatia only four or five days previously, described how their 15-year-old son had sustained the family by trading fruit on the street. They recounted how, on 7 January 1993, New Year, the last mosque in Prijedor was blown up. There had been about 50 mosques. It is reported that now even moderate Serbs are being forced to leave.

27. It is also reported that, in the mainly Muslim village of Cela near Prijedor, 10 villagers have been shot and killed in their homes in the last few months. Random shootings, bombings and house burnings are reliably reported to be the norm there.

28. Furthermore, the Special Rapporteur is gravely concerned by reports that ethnic cleansing is currently being carried out by Serb forces especially in towns such as Cerske, Kamenica, Srebrenica, Zepa and Gorazde in eastern Bosnia and Herzegovina. Problems of access by international monitors and the severing of communications with the outside world have led to grave concern for their inhabitants' safety.

29. According to current reports the relatively good relationship which previously existed between Muslims and Serbs in Trebinje, southern Bosnia and Herzegovina, has been destroyed. In recent days a large number of the town's Muslim population has fled due to the climate of fear which seems to have developed. The main mosque in the town was reportedly destroyed on 26 January 1993 and a Serb was beaten to death for defending his Muslim friend against civilians.

30. There are accounts of ethnic cleansing being carried out by Croat forces in the area of Prozor towards the end of 1992. Clashes between Muslim and Croat forces resulted in as many as 3,000 Muslims fleeing into the mountains in October 1992. There are reports of large-scale arbitrary detention of Muslim men, women and children by Croat forces. Muslim detainees were also reportedly asked to sign an oath of allegiance to the Croat authorities. It is estimated that 70 to 80 Muslim homes were destroyed in Prozor even after combat had stopped. Non-violent attempts by Muslim residents to return to the town after the fighting were reportedly blocked by Croats. The freedom of movement of those Muslims who remain in Prozar has reportedly been severely restricted.

31. The following sections portray some of the major component parts of ethnic cleansing as well as other violations of human rights and war crimes. For the most part, they are based on the accounts of witnesses. These are but a few selected examples of the testimonies received by the Special Rapporteur, which are used here to illustrate the scale of human rights abuses in Bosnia and Herzegovina.

B. Summary executions

32. The Special Rapporteur has received a large number of reports of arbitrary execution by the armed forces of all sides when new towns and villages are taken. It appears that prominent members of the community are targeted in particular. The reports relate to all areas of Bosnia and Herzegovina. Summary executions which allegedly took place in detention camps are reported in later sections concerning treatment of prisoners.

33. It is reported that many of the villages around Foca, in south-east Bosnia and Herzegovina, suffered large-scale summary executions by Serb forces around March 1992. A witness from the village of Jelec reports that all the men were rounded up and shot with machine-guns. She reportedly lost her husband, his five brothers and their four sons. The women and children had reportedly escaped to the mountains and returned to the village four days later to bury the men.

34. On 6 April 1992 most of the town of Zvornik was taken by Serb forces. According to one report, a Serb woman, her Muslim husband and several

neighbours were forced to lie face down in their orchard by a group of 30 Serb paramilitaries. The woman's husband, two elder sons and three neighbours were then allegedly strangled by the Serb forces.

35. A Muslim pensioner from the town of Visegrad reports that in mid-April 1992 she watched for 36 hours from the window of her house as Serb forces executed groups of people on the old Visegrad bridge. Victims were either pushed off the bridge and shot in the water, or shot and then pushed. Groups of people were reportedly picked up by car and killed on the bridge every 30-60 minutes. The witness managed to leave the town but had to cross the bridge to do so. She vividly describes walking through the remains of victims as she crossed it. The Special Rapporteur has been informed that, due to the many atrocities which have taken place along its banks as it winds its way through Foca, Bratunac and Bijeljina in central and eastern Bosnia, the river is locally known as the river of death.

36. Reports from the east of Bosnia and Herzegovina include the testimony of a witness from Srebrenica who gives 21 April 1992 as the date when "organized killing of the Muslim population began with the emphasis on younger people and distinguished Muslims". According to the account, dozens were killed. Another witness from the nearby village of Gostilj reports that he witnessed the beating to death of his neighbour when Serb forces took the village.

37. Zaklopaca is a village near the town of Vlasenica in eastern Bosnia which had a mainly Muslim population of about 150 prior to the conflict. Reports state that on 16 May 1992, at least 83 Muslim men, women and children were arbitrarily executed by Serb forces there. Surviving eye-witnesses have provided the names of 83 victims but one witness reportedly counted 105 bodies including 10 members of one family, 8 members of another and 7 members of a third. Witnesses were returning from the fields at about 5 p.m. when the first of seven or eight cars carrying Serb forces arrived. One car reportedly had the word pokolj (massacre) written on it.

38. It is reported that on 26 May 1992 about 200 Muslim refugees from Visegrad hoping to reach Macedonia were turned back at the Mokra Gora border crossing into Serbia. An employee of the bus company transporting the refugees said that later that day the group was stopped outside Bosanska Jagodina by Serb forces. The witness alleges that 17 men were taken from the buses and executed on the spot.

39. There used to be six small mountain villages called Hambarne, Rizvanovic, Rakovcani, Sredice, Carakovo and Bisceni near Kozarac in north-west Bosnia and Herzegovina. When Serbian forces took these villages around May 1992 three quarters of the 4,500 inhabitants are reported to have been executed. One survivor provided a list of 282 people killed at this time. In Bisceni 75 people from 50 houses were reportedly executed. A boy aged 16, now a refugee in France, was taken by the Serb forces to help loot houses there. Together with a neighbour, he witnessed the death of his uncle, 61 years old, and a neighbour aged 58: "They made them punch each other's head before hanging them from a bridge". In the village of Blagaj, near Bosanski Novi, at least nine Muslim men were reportedly shot when several hundred people were rounded up by Serb forces on 9 June 1992.

40. Mostar is the second largest city of Bosnia and Herzegovina, situated in the south-east. In June 1992 a number of arbitrary executions are reported to have taken place in the parts of the town then controlled by Serb forces. A number of mass graves have reportedly been discovered since Croat forces took these areas in late June. One such grave containing 150 bodies was reportedly found at Sutina due to the testimony of the sole survivor. Serb forces allegedly interrogated and killed several men at the morgue in the graveyard there. A local pathologist stated that almost all of the dead had been shot at close range with automatic weapons. The witness reported being forced to carry the bodies to a rubbish dump where he was himself shot at. He escaped by throwing himself down an embankment.

41. It is alleged that massacres by Serb forces frequently took place on forced journeys from Kotor Varos to Travnik. A Serb bus driver reports that on 18 August 1992, 70 Croats were executed by Serb forces near the cliffs on the River Ugar. Six people reportedly survived the massacre and the driver is said to be in a state of deep shock. In his third report (at para. 44) the Special Rapporteur described witnesses' accounts of another alleged massacre on the road to Travnik, south of Skender Vakuf. On or about 21 August 1992, 200 detainees travelling in a convoy of buses were reportedly executed along the edge of a ravine by Serb forces. Five witnesses apparently escaped by throwing themselves into the ravine.

42. The Special Rapporteur has received reports of summary executions being carried out by government forces in villages near Bratunac as recently as December 1992. It appears from reports that government forces attacked and entered the villages, conducted a house-by-house search and killed many of those they found. After the government forces retreated, Serb forces entered the villages to collect the dead and wounded. The remains, reportedly mutilated, were taken to Bratunac Hospital before burial. Reliable estimates put the number of dead at 100 and the wounded at 320.

43. The Special Rapporteur has also received reports of the alleged summary execution of Serb combatants by Muslim forces in the village of Bradina on 26 May 1992. Between 85 and 100 Serbs reportedly surrendered after 30 hours of fighting at the predominantly Serb village and were immediately executed. Reports state that the remaining villagers were protected by Croat forces who had already gained control of the territory.

C. Arbitrary detention and the treatment of prisoners

1. General observations regarding arbitrary detention

44. From July until the end of December 1992 the ICRC registered approximately 10,800 detainees in more than 50 places of detention in Bosnia and Herzegovina. During the same period a total of 5,534 prisoners were released under the auspices of the ICRC and all were transferred to safe areas, except 115 who decided to remain in Bosnia and Herzegovina.

45. In addition, some 2,500 persons are believed to have been released or exchanged without an ICRC presence. However, the ICRC was not informed of

where these exchanges took place nor of the circumstances. The practice of exchanging prisoners encourages all sides to engage in the arbitrary and unlawful rounding-up of civilians.

46. There has recently been public discussion of allegations that a large number of detention camps exist which have not been declared to international organizations. Despite the continuous efforts of the ICRC, it has not been possible to verify these allegations.

47. It is doubtful whether anyone knows the exact number of prisoners and hostages held by all sides. The ICRC does not have access to all parts of the territory of Bosnia and Herzegovina due to the failure of the parties to guarantee the security of ICRC delegates. This problem of access is particularly acute in the eastern part of the country, in and around Foca, Zepa, Gorazde and Srebrenica.

48. Furthermore, the parties to the conflict have consistently refused to notify the ICRC of all places of detention as well as the names of all those detained. This is so despite their own repeated, public commitments to do so. It is evident from several reports that when the military forces of any of the parties to the conflict enter a newly taken town or village, men are detained, for example in the local school, for later exchange. It is also suspected that undeclared prisoners are kept by all parties along the confrontation lines.

49. The Special Rapporteur believes that only a very small percentage of detainees are genuine prisoners of war. The remainder should never have been imprisoned. Most prisoners are innocent people who have been seized for exchange, which furthers ethnic cleansing.

50. After the ICRC visited camps in early August, the parties agreed on 1 October that 1,560 prisoners would be released and transferred to Karlovac in Croatia, which has served as a transit camp pending the granting of asylum by a third country. About 5,000 other detainees had also been targeted for release and were waiting for the Karlovac camp to empty. In an attempt to free all of these 6,560 people, the ICRC and UNHCR launched several urgent appeals for asylum to which 25 countries responded positively. The Special Rapporteur was deeply disappointed by the slow and inadequate response of the international community to these appeals. The delay seriously hampered efforts to free detainees in October 1992.

51. It is alleged that in some camps in August 1992, some prisoners, whose appearance would have revealed too clearly ill-treatment and under-feeding, were executed. At the same time, it reportedly became the practice for prisoners to be transferred from camps as soon as the ICRC announced they would be visited. Convoys were formed which brought prisoners to be exchanged for detainees in the hands of opponents, often leaving them to make their own way across the battlefield at the confrontation line. Furthermore, it is alleged that some convoys ended in mass executions, such as the massacre of several hundred detainees which is reported to have taken place south of Skender Vakuf on or around 21 August 1992.

52. On 27 August 1992 the three parties to the conflict agreed that all civilians who had been illegally detained were to be liberated and the sick and wounded evacuated from the camps. On 1 October 1992 the parties signed an Agreement on the Release and Transfer of Prisoners which this time committed them to liberate all detainees including the small percentage of combatants detained - except those who were accused of committing grave breaches of international humanitarian law. The Special Rapporteur would like to reiterate his concern that internationally recognized fair trial standards be applied in all such cases. The parties also repeated their commitment to notify the ICRC regularly of all places of detention and all detainees. On 9 December 1992 the three leaders orally and individually reaffirmed their commitment to release all detainees. When he met with representatives of the parties during his second mission in October 1992, the Special Rapporteur emphasized the importance of honouring these commitments and one leader gave a personal promise to do so.

53. In mid-September 1992, the Government of Bosnia and Herzegovina held 1,024 known detainees and by the end of December had released 137 of them; Croat forces held 894 known detainees and by the end of December had released 357 while Serb forces held 6,373 known detainees and by the end of December had released 5,040.

54. By now all detainees should have been released, but the process has come to a standstill. As of 22 January 1993, the releases are blocked with 2,757 persons still detained in 19 known places of detention.

55. The Special Rapporteur has received many testimonies which substantiate his earlier reports and amplify their detail. In describing the treatment of prisoners in the present report the Special Rapporteur focuses on testimonies concerning places of detention which have not been referred to in his other reports. Some of these are now closed, but others are still in use. The closure of the camps did not always mean the liberation of prisoners, as exchanges and transfers frequently emptied the camps on the eve of their "closure". An example of this procedure is the December 1992 closure of the camp at Manjaca which is described in the following sections.

56. Although it is difficult to assess conditions in camps currently in use, testimonies from recently released detainees referred to in the following sections give rise to fears for the health and safety of all those presently detained, particularly those to whom the ICRC has not been accorded access.

2. Situation in Serb-controlled places of detention

(a) Known places of detention

57. According to the ICRC, there are presently 1,333 persons detained in five known camps run by Serb forces: Banja Luka Tunjice, Doboj, Kotor Varos, Vlasenica and Batcovic (where 17 Croats who were reportedly imprisoned during the first military conflict in Croatia are now held).

58. In December 1992 Serb forces emptied the Manjaca detention camp by releasing a total of 2,435 detainees to the ICRC. Conditions at Manjaca camp before it was closed are reliably reported to have been extremely poor, with

life-threatening neglect of prisoners, lack of food and inadequate hygiene. Just before the closure of the camp, 532 persons were transferred from Manjaca without prior notification to the ICRC despite the undertaking of 9 December 1992 that all prisoners visited and registered by the ICRC in Manjaca camp were to be released, unilaterally and unconditionally, along with all other prisoners held by all sides. The majority of the transferees, 401 people, were received by Batcovic camp; 131 prisoners were not accounted for by Serb forces for more than a month. Finally, the ICRC was informed that the missing 131 were at Kula camp near Sarajevo airport in preparation for an exchange of prisoners. However, the ICRC has as yet been unable, for security reasons, to verify this information.

59. At Batcovic camp, in the north-eastern part of Bosnia and Herzegovina, 1,163 prisoners were kept in what the Special Rapporteur described, after the visit there by his second mission, as two cavernous, unheated storage buildings. Temperatures there dropped to between -10° and -12° C at the beginning of January 1993 and prisoners there face a fight for survival against such temperatures in the winter months still to come.

60. There are reports that all parties to the conflict have closed off entire villages segregated by ethnic background to make them function as detention camps. Sixty Muslims are reported to have been so detained by Serb forces in Ripac, near Bihac. In these villages, detainees are guarded, harassed and kept in complete isolation.

(b) Some testimonies regarding treatment of prisoners

61. The town of Bileca, in the south-east of Bosnia and Herzegovina, had a population of over 13,000 prior to the conflict, of whom 80 per cent were Serb. There were reportedly three waves of detentions of Muslims in the town: in June, October and December 1992. In the most recent wave, women and children were reportedly detained. Several men reportedly turned themselves in to be with their families but were kept in detention even after their families were released three days later. They were never told the reason for their detention. On 19 December 1992, 51 ex-detainees, who had been held in the police station and at a boarding school, were transferred from Bileca to Montenegro under ICRC supervision. The accounts of their detention included allegations by some that they were tortured with electric shocks as guards interrogated them.

62. One hundred and seventy Croats and Muslims were reportedly imprisoned in a cellar in Bileca which measured 120 square metres and had three small windows. The detainees were reportedly beaten by their Serb guards three times on the night of their arrival and one is reported to have died 10 days later from the injuries received. Detainees were also reportedly beaten as they went to the toilet by three or four soldiers. During the whole period of his captivity, from 1 June to 18 August 1992, the witness reports that he was given the opportunity to wash himself only once and never had a change of clothes. The guards reportedly closed the windows of the cellar and turned on reflectors of 2,000 watts: "We did not know what to do so we started to roar in an attempt to get one of them to beat us up because they would then open the door so that fresh air would come into the room. We used to lose about four litres of liquid per night and they would not give us any water until

late in the afternoon of the next day". One prisoner reportedly went into a coma and died as a result. The witness states that everything improved when the ICRC arrived and the detainees were registered.

63. In north-east Bosnia and Herzegovina lies the town of Brcko, which had a population of 87,000; 44 per cent of the inhabitants were Muslim, 25 per cent Croat and 21 per cent Serb. Reports from one source state that from May to June 1992, between 2,000 and 3,000 mainly Muslim men, women and children were arbitrarily executed by Serb forces at a brick factory (the Luka camp) on the Sava river and at a pig farm near Brcko. The Luka camp reportedly consisted of three hangars enclosed by an electric fence which the prisoners themselves erected. The guards had laid mines around the outside. Approximately 1,000 prisoners, mainly Muslims, were reportedly kept there at any one time. Due to overcrowding, prisoners in one hangar reportedly had to sleep standing up. It appears that neither the ICRC nor international observers ever visited the camp. Witnesses claim to have seen the execution of up to 50 prisoners at a time. One witness's account of what he saw during 50 days' imprisonment at the Luka camp includes the following: people who had been beaten to death were brought in the trunks of cars and dumped in the middle of the warehouse; the witness himself had to carry out the bodies of those who had died from night-time beatings and throw them into the Sava river; he saw the corpses of 15 young men whose genitals had been mutilated; the leader of the territorial defence force was killed by soldiers who jumped up and down on his torso; the witness also reports seeing at least 30 people taken to the sewage canals outside the warehouse where their throats were cut. Testimonies include reports of rape and sexual assaults against women and children. Until May 1992 bodies were reportedly dumped in the Sava river or buried in a mass grave whose location has allegedly been identified by a former camp guard, but thereafter they were transported at night by two-ton refrigerated meat lorries to be burnt at the old and new "Kafilerija" factories near Brcko.

64. Another witness, who spent 27 days at Luka camp around mid-May 1992, described the food as consisting of a piece of bread about every three days. He also reports seeing one woman in her mid-thirties die of starvation.

65. The Special Rapporteur has received reports that after the mass arrest of about 2,000 Muslims by Serb police in Bratunac in eastern Bosnia and Herzegovina on 9 May 1992, 500 to 600 men were detained in the hall of an elementary school there. Those who could not fit inside were reportedly shot with automatic weapons in front of the hall. Beatings were reportedly carried out according to lists naming those most influential in the community. Between 30 and 50 people reportedly died from their injuries the first night while nine others suffocated in the crush as the 500-600 detainees struggled to escape the beatings. An imam was allegedly beaten and stabbed to death in front of the 500-600 prisoners after refusing to take the Christian faith and raise three fingers in the Serb manner. After three days of beatings the group was transferred to Pale, where the ill-treatment continued until they were exchanged. It is alleged that before they left Pale, the detainees were tied in groups of 10 and had to pass between lines of soldiers who beat them with cables, clubs and iron batons.

66. A witness reports being arrested by Serb forces and brought to Kula camp near Sarajevo airport in May 1992. Fifty people, including women and children

aged from 3 to 13 years old, were also detained there. Elderly Serbs and Serb women were released, while young male Serbs were forcibly recruited under threat of death. Muslims and Croats were reportedly kept in an overcrowded room without beds and with only a can for a toilet. Their one meal a day reportedly consisted of a cup of tea and a piece of bread. The witness states that they were heavily beaten during interrogation and that one person died from his injuries. The witness himself reports fainting from beatings and being denied medical help.

67. Men from Gacko were reportedly imprisoned by Serb forces in the basement of the Hotel Rudnik and the Gacko power plant from June 1992. The detainees were reportedly beaten constantly, especially at night, to prevent them sleeping. At least 10 detainees are reported to have disappeared after the guards called them by name. The witness reports that he saw the arbitrary executions of five detainees on separate occasions.

3. Situation in Government and/or Croat-run places of detention

(a) Known places of detention

68. According to the ICRC, there are 887 persons being held by the Government of Bosnia and Herzegovina in 10 known places of detention: Bihac, Breza, Konjic, Tarcin, Tuzla, Tesanj, Travnik, Visoko, Zenica and Kupra. It refuses to release the remainder of its detainees, saying they are accused of grave violations of international humanitarian law.

69. The Government-run camp at Tarcin was notified to the ICRC, despite the clear obligation to notify promptly, and visited for the first time in November 1992. Conditions there are reported to be appalling with inadequate heating and insufficient coverings for those detained. In Visoko, detainees are locked in houses in the town and come under shell-fire. In Kupra, detainees are also reported to be at risk because of the proximity of the camp to the confrontation line.

70. A total of 279 prisoners are still in detention at Government-run Zenica prison. The building is over 200 years old and is a former maximum-security prison. The Special Rapporteur described conditions there in his third report (at para. 36). Since then, testimonies from Serb ex-detainees who were released on 23 December 1992 have been received. They include allegations of beatings and under-feeding.

71. Croat forces are detaining 537 persons in four known places of detention even though their leaders had stated that they held no further detainees. They are: Livno, Mostar Rodoc, Orasje and Rascani.

72. A total of 367 people are "assigned to residence" in de facto detention in the villages of Livno and Rascani. Rascani lies in the south-west Bosnia and Herzegovina and has 250 Serb inhabitants, mostly women and children, and is reportedly guarded by Croat police. There is reported to be no communication with the outside world whatsoever and no freedom of movement. All of the inhabitants reportedly wish to go to a Serb-controlled area. They do not feel safe and allege provocations, shooting and intimidation by Croat forces.

73. ICRC delegates who visited the Croat-run camp at Orasje on 9 December 1992 found 161 prisoners who had been transferred from Bosanski Brod. Fifteen prisoners are reported to have died at Orasje while being forced to dig trenches under constant shelling near the confrontation line. Ten days before the 9 December 1992 visit 60 prisoners were reportedly transferred to Slavonski Brod on Croat territory in preparation for an exchange.

74. Ninety-five Serb civilians and one child have reportedly been kept in Stupari, 8 kilometres north of Kladanj, central Bosnia, since May 1992. According to the Mayor of Kladanj this has been "for their own security, to protect them from retaliation by the Muslim population". A team from the European Community Monitoring Mission (ECMM) has visited the three buildings in Stupari where the detainees are held. Their own homes were burnt by Muslim forces. They are guarded by five armed soldiers and allowed to go outside for one hour a day. It is reported that their food consists of rice and some bread, but that sometimes they have nothing to eat for three days. The detainees stated that the guards were frequently violent towards them and no medical care is offered. They appeared to the visiting team to be "psychologically worn out and very weak". The ICRC registered these detainees in December 1992.

(b) Some testimonies regarding treatment of prisoners

75. The Special Rapporteur has received reports that torture and ill-treatment were suffered by Serbs in places of detention in Konjic between June and July 1992. Two young Serbs were reportedly eye-witnesses to five deaths from beatings by Muslim guards. They did not want to specify the exact location of the prison out of concern for the safety of relatives who were still detained. Thus it is unclear whether the allegations relate to the Konjic camp where 106 detainees are currently being held by government forces and which is visited by the ICRC. Both witnesses stated that they themselves were beaten when they left the building to go to the toilet.

76. A Serb witness has recounted how he was detained by government police when they found him in the basement of his house in Visoko on 6 June 1992, while the town was under attack by Serb forces. At a local military barracks the witness states that he was put in a chair with his arms tied by ropes, then beaten and interrogated by soldiers and police for four hours. During the beating, the police revived him by throwing water over him. He reports that he was the first detainee in the barracks but that over time the number grew to 150 people detained in two rooms. The witness reportedly saw two prisoners beaten to death with the camp commander participating in these killings. There are also reports that Muslim civilians in Zenica and Visoko were allowed free access to the camps in order to beat prisoners.

77. On 7 July 1992, men and women from the village of Presjenica, near Sarajevo, were reportedly taken prisoner by government forces and held in a camp in Decic for two months. A 95-year-old Serb man was reportedly beaten to death by guards just before the prisoners were exchanged. Conditions of life at the camp reportedly involved under-feeding, beatings for "anything and everything", humiliations and intimidation.

78. The Special Rapporteur has received the direct testimony of a 58-year-old Serb woman from Mostar who was taken prisoner by Croat forces in her appartment there on 31 July 1992. The soldiers had a list of names of those who were to go to detention camps. She was first taken to a Croat-run prison in Mostar where she reports being beaten on the left side of her body during interrogation. She was still unable to lift her left arm six months later. She reports that younger women there were forced to perform sexual acts before Croat forces and other prisoners. When later transferred to Capljina, south of Mostar, the witness was kept with about 100 other women in barracks separate from the male detainees. All the women were Serbs except for a Muslim and a Croat who both had Serb husbands. At night, one bucket served as the women's toilet. It is alleged that at times, male prisoners were forced to drink its contents, and at others, forced to eat grass and act like sheep. It is alleged that beatings at the camp sometimes ended in the death of the victim. It appears that on 31 July 1992 the camp was first visited by an international delegation and on a second visit, the women were reportedly locked in their barracks and hidden. The witness was exchanged on 18 August 1992.

79. Detainees released from Konjic on 23 December 1992 have provided the following detailed accounts of their earlier detention at the Celibici camp between May and September 1992. Prisoners were kept in three buildings in the camp. One is reported to have been a ventilation tunnel about 120 centimetres wide, 30 metres long and 2.5 metres high. Air entered through a small glass window in the door and there was no light. Prisoners in the tunnel used a bucket as a toilet but were not allowed to empty it regularly. Thus, as the tunnel inclined, up to 10 centimetres of human waste accumulated at the bottom. For the first 20 days the detainees were not allowed to wash. For the first three days the ex-detainees reported that they were not provided with any food. For the next one and a half months they were given stale pieces of bread the size of a matchbox, with some vegetables, three times a day. For about the following two months they were given only bread. One witness states that prior to his detention in Celebici camp, he weighed 96 kg. By the time he was transferred, he weighed 60 kg. Accounts of the beating to death and mistreatment of prisoners are common to all testimonies which the Special Rapporteur has received regarding this camp. One witness describes the torture and beating to death on 4 July 1992 of a man accused of running a radio station and transmitting information to Serb forces.

80. Incidents of arbitrary detention of Muslims by Croat forces have been reported during clashes between Croat and government forces in and around Prozor, near Gornji Vakuf, in October and November 1992. These include the case of a 14-year-old Muslim boy who was reportedly detained by HVO (Croatian Defence Council) military police. He was reportedly only released four days later when his father and others surrendered their arms.

81. Many reports have been received of the arbitrary detention and ill-treatment of civilians by government forces in and around Sarajevo. The Special Rapporteur has obtained direct testimony from a Serb refugee who arrived in Serbia from Sarajevo in December 1992 regarding the use of prisoners as human shields. The witness states that Muslim forces took Serbs prisoner in order to use them as human shields against snipers when going to

and from their military posts. The witness reportedly saw this from the window of her home which was situated next to the Muslim forces' headquarters.

D. Investigation of widespread occurrence of rape

82. An alarming number of allegations of the widespread occurrence of rape have been made, particularly in the context of the confict in Bosnia and Herzegovina. It was repeatedly stated that rape was being used as an instrument of ethnic cleansing. Many documents have been received by the Special Rapporteur in this connection. Wide-ranging estimates of the total number of rape victims had been made.

83. Gravely concerned at the nature of these reports, the Special Rapporteur decided to send an international team of medical experts to investigate the allegations and report to him on their findings. The report of the medical experts who visited the former Yugoslavia from 12 to 23 January 1993 is attached, in extenso, as annex II. The Special Rapporteur strongly endorses the observations, conclusions and recommendations of the team of experts.

84. In particular, the Special Rapporteur would like to emphasize the following from among their conclusions:

> "Rape of women, including minors, has occurred on a large scale. While the team of experts has found victims among all ethnic groups involved in the conflict, the majority of rapes that they [the team of experts] have documented had been committed by Serb forces against Muslim women from Bosnia and Herzegovina.
>
> "The team of experts is not aware of any attempts by those in positions of power, either military or political, to stop the rapes.
>
> "There is clear evidence that Croat, Muslim and Serb women have been detained for extended periods of time and repeatedly raped.
>
> "In Bosnia and Herzegovina and in Croatia, rape has been used as an instrument of ethnic cleansing."

85. Rape is an abuse of power and control in which the rapist seeks to humiliate, shame, degrade and terrify the victim. In all his reports, the Special Rapporteur has emphasized the variety of methods which are used to achieve ethnic cleansing. Rape is one of these methods, as has been stated from the outset. In this context, rape has been used not only as an attack on the individual victim, but is intended to humiliate, shame, degrade and terrify the entire ethnic group. There are reliable reports of public rapes, for example, in front of a whole village, designed to terrorize the population and force ethnic groups to flee.

86. The Special Rapporteur feels that it is not possible at present to determine the number of victims of rape in this conflict. However, it is clear that there are large numbers involved and care for them must be the first priority. The importance of respect for the victims was highlighted by the team of experts thus: "While the media have been helpful in bringing the issue of rape to international attention, some women have been revictimized

through repeated interviewing without consideration of the psychological consequences or social support available to them." Furthermore, the experts noted that a number of missions to investigate allegations of widespread rape had been undertaken in the previous two months. These included missions by the following: the European Community, the World Council of Churches, Amnesty International, Helsinki Watch and two French physicians. The team of experts found that "lack of coordination has led to duplication of effort and has contributed to 'mission fatigue' among victims, care-givers and personnel involved in delivery of services and assistance to refugees."

87. In January 1993, during his stay in Zagreb, the Special Rapporteur was informed of joint endeavours by governmental and non-governmental agencies in Croatia, including charitable organizations, to provide medical care for victims of rape. Their urgent needs must be addressed. In this regard, the Special Rapporteur endorses the view of the medical experts that "establishing health services that are designed specifically for rape victims will lead to further stigmatization. Therefore, programmes should be created for all women and children who have been traumatized by war. These considerations should be taken into account by the international community when awarding aid for specific programmes". Women should not be required either to declare or prove that they have been raped in order to qualify for health care or other assistance.

88. Many women have sought refuge outside the territory of Bosnia and Herzegovina. While each application for refugee status should be considered on its merits, it should be clearly stated that a well-founded fear of rape is a well-founded fear of "persecution" within the definition of refugee contained in the Convention relating to the Status of Refugees of 1951 and the 1967 Protocol thereto if the persecution is due to the victim's "race" or "nationality". This is certainly the case where it is used to further ethnic cleansing. In countries of asylum, refugees who have in fact been victims of rape in connection with ethnic cleansing should be accorded appropriate medical and psychological care.

89. Article 27, paragraph 2, of the Fourth Geneva Convention states: "Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault". Rape in this context is a grave breach of the Fourth Geneva Convention (art. 147) and as such, a war crime (Additional Protocol I).

E. The particular suffering of children

90. The Special Rapporteur is gravely concerned at the violations of the human rights of children in Bosnia and Herzegovina. He supports the work of the Committee on the Rights of the Child to implement the Convention on the Rights of the Child and, in particular, to raise international awareness of the effects of armed conflicts on children. The Convention, inter alia, prohibits the torture, abuse or neglect of children and provides for their protection in all circumstances.

91. The indiscriminate targeting of civilian population centres has particularly profound consequences for the children involved. They have themselves been killed and wounded in these attacks; witnessed the death and

injury of others including close family members and neighbours and have seen their homes destroyed. They have been arbitrarily imprisoned in appalling conditions and there are reports of rape of children in and out of detention camps. This war has created countless orphans and a generation of refugees.

92. A particular problem arises with regard to the children who have been born, or are expected to be born in the near future, as a result of rape. Suggestions have been made that adoption of these children should be facilitated. At present, there would appear to be difficulties under national adoption legislation in Bosnia and Herzegovina, Croatia, as well as in the Federal Republic of Yugoslavia. In order for a married woman to place her child for adoption, her husband's consent is required by law. While this provision may be regarded as serving the best interests of the child in peace-time, circumstances are fundamentally different in times of armed conflict and in the context of rape. Wives may not wish to inform their husbands that they have been raped. Husbands fighting at the front may be impossible to contact, in detention or disappeared. The national parliaments concerned may wish to consider this matter in view of the circumstances currently prevailing.

93. In any event, inter-country adoption may be considered, although only "as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin" (art. 21 (b) of the Convention on the Rights of the Child). The Special Rapporteur has been informed by religious leaders of Muslim communities and by concerned individuals and organizations in Croatia and in Bosnia and Herzegovina that there is a strong will to raise these children within the local communities. However that may be, in considering international assistance, the Special Rapporteur emphasizes that the wishes of the mother and the efforts of local communities should be identified, respected and supported by the international community. It goes without saying that the guiding principle in any such discussion must be the best interests of the child, as provided for in article 3 of the Convention on the Rights of the Child.

94. The Special Rapporteur supports the work of UNICEF as the lead agency in this field and shares its concern to avoid, at all costs, the stigmatization of, or trafficking in, babies who are born as a result of rape.

F. Forced transfer of populations

95. The following are just some of the accounts which the Special Rapporteur has received mainly from witnesses' testimonies, regarding the forced transfer of populations. These are forced transfers which those involved were compelled to "accept" owing to the climate of fear.

96. Since the Special Rapporteur detailed events in Kozarac in his third report, information has become available describing how women, children and old people from the villages in the area were detained in camps such as Trnopolje and then forcibly transferred towards government lines in cattle trucks in June 1992. The first convoy which left Trnopolje consisted of five cattle trucks filled with 1,800 people. During the two- to three- day journeys there was reportedly no ventilation and nothing to eat or drink. Many old people and babies are reported to have suffocated. It is reported

that Serb forces systematically asked for ransoms, asking each truck to put together a certain amount of money while threatening that the children would be killed. At Doboj they were marched in groups along a mined road before crossing the river Bosna by an old suspension bridge. One woman fell from the bridge with her two children and was carried away by the water which was in full flood. Another threw herself from the bridge when a Serb soldier reportedly ordered her to throw her baby into the water. Finally, the group had to walk 15 to 20 kilometres and cross the confrontation line in great peril in order to reach Government-held territory.

97. Before the conflict 62 per cent of the 11,000 inhabitants of Gacko, in the south-east of Bosnia and Herzegovina, were Serbs and 35 per cent Muslims. In June 1992, when Serb forces took the town, local authorities issued certificates purporting to allow unhindered passage to Macedonia. A convoy of 100 cars was organized by those wishing to leave. Five or six kilometres outside the town, Serb forces were waiting. The men were reportedly dragged out of their cars and severely beaten about the head with iron rifle butts, jumped on by the soldiers, forced to beat each other and set on fire with petrol. Women and children were watching from the cars. The convoy was robbed and their cars confiscated. Women were reportedly detained in a nearby hotel for 20 days where their money and valuables were stolen. Some of the women were reportedly taken to the bedrooms and raped.

98. Muslim witnesses from the region of Zvornik in eastern Bosnia and Herzegovina report that their registration as residents was cancelled at the local police station after the region was taken by Serb forces. One witness reported that the words "deregistered from Zvornik, departing for Subotica" were written on his identity card at the police station. Subotica is a border-crossing point between Serbia and Hungary. The Muslims from this witness' village were reportedly given an ultimatum to leave, accompanied by the burning of several houses and the firing of shots into the air as warnings.

99. In June 1992 deportees from Kozluk and Zvornik, towns which had a Muslim majority, gave the following account of their forced deportation to Hungarian border guards. The towns were sealed by Serb forces. Muslim families were told they had six hours to pack their belongings and go to a certain gathering point. In the case of Zvornik, it was a farmyard. At these gathering points, the names of the deportees were put on a list, and everyone was individually ordered to sign this list. They were informed that by their signature they "voluntarily" gave up all their belongings. The deportees were then ordered, some at gunpoint, to board buses and trucks and later trains until they arrived at Palic (Vojvodina) where they were put up at the local camp site. Although the deportees apparently did not so request, they were provided with Yugoslav passports after photographers came to the camp site for this purpose. For some deportees, the issuing authority of their Yugoslav passport was "MUP (Ministry of Internal Affairs) of the Republic of Serbia, Secretariat in Subotica". Deportees reported that between 26 June and 1 July 1992 there were about 1,200 persons from Kozluk and another 1,800 from Zvornik at the Palic campsite. After being taken to the border, these persons were admitted to Hungary as refugees.

100. A large number of Muslim and Croat men, women and children were released from the Serb-run detention camp at the Mlakve football stadium in Bosanski Novi on 22 July 1992. They had reportedly been subjected to regular beatings there. On release, they were taken to Croatia in a convoy and some ex-detainees reported that they were forced to sign a declaration stating that they were leaving the town voluntarily.

101. Some 3,500 Serbs reportedly lived in the mainly Muslim town of Kladanj, in central Bosnia and Herzegovina, before the present conflict. On 22 January 1993, an ECMM team visited the Mayor of the town who said that all but 100 had left the town, mostly voluntarily, while others had left "under pressure or even violence from Serb extremists".

G. Attacks on non-military targets

102. In this conflict, civilian population centres have frequently been the object of sieges in violation of international humanitarian law.

103. Hospitals in towns such as Goradze, Srebrenica and Sarajevo, which have suffered for months under siege, are reported to be under constant shelling and artillery and rocket fire. A team of European Community monitors who visited Gorazde on 20 January 1993 has reported that there are about 70,000 people living there, of whom about 35,000 are displaced persons. The town has had no electricity or water since May 1992 and many people living in cellars or in the remains of burnt houses. Telephone lines are cut and all roads are closed. The only communications possible are through amateur radio operators. The use of the "Red Cross" symbol is now widely regarded by medical and aid workers as a disadvantage as it seems to attract attacks instead of helping to protect these humanitarian and medical activities.

104. A medical doctor from Sarajevo has emphasized that 15 per cent of the wounded he treats are children. Furthermore, his testimony describes the absurd situation whereby those in the hospital, who have already been injured by shooting and shelling are shot at and shelled again. He refers to this as "the wounding of the wounded".

105. The frequent and deliberate destruction of houses cannot be justified as an action against "military targets". In some cases, the homes of those who have fled ethnic cleansing have been destroyed to prevent them from returning, while others have been destroyed to force residents to flee. The weight of evidence is against Serb forces for the majority of these acts with reliable reports of such destruction being carried out in all areas under Serb control from Kozarac in the west to Jajce in the centre and Bratunac in the east. All parties to the present conflict have been responsible for the ethnically selective destruction of houses. For example, Serb houses were reportedly burnt in the village of Bradina by government/Croat forces in July 1992 as were Muslim houses in Prozor by Croat forces in October 1992.

106. Although the conflict in Bosnia and Herzegovina is not regarded as a religious one, it has been characterized by the systematic destruction and profanation of mosques, Catholic churches and other places of worship, as well as other sites of cultural heritage. This has been reported to be the case particularly in areas currently or previously under the control of Serb

forces. The destruction by Serb forces of the Muslim cultural heritage museum of Trebinje in November 1992 and of its mosque on 26 January 1993 may be cited here to represent very many other examples. However, it has been reported that some Orthodox churches have been destroyed in areas of central Bosnia and Herzegovina which were, or are, under the control of government and/or Croat forces.

107. Another method of indiscriminately attacking civilians which has been used in this conflict is through threatened environmental disasters due to military action. Examples include the reported mining of the hydroelectric power station at Bijelo Polje in Mostar. The consequences of destruction would be catastrophic for civilians over a wide area. In addition, the large chemical plant in Tuzla has been shelled many times by Serb forces, threatening the lives of the civilian population for miles around as well as an environmental disaster.

108. Humanitarian convoys have been and still are being attacked, harassed and prevented from reaching those in need. In that regard, the Special Rapporteur recalls that at various times during the conflict it has been necessary for agencies such as the ICRC and UNHCR to suspend provisionally all or part of their operations in order not to endanger the lives of their delegates. UNPROFOR personnel have also at times been prevented from carrying out their mandate. The latest tragic incident occurred on 2 February 1993, when one person died and another was seriously injured in an attack on a UNHCR convoy near Mostar.

109. The killing and wounding of journalists has reached unprecedented levels during the conflicts in the former Yugoslavia. The independence and safety of members of the press should be guaranteed by all parties to the conflict. The Special Rapporteur appreciates the role which the media are playing in informing and mobilizing international public opinion regarding human rights abuses in this conflict.

H. Humanitarian crisis

110. In December 1991, 100,000 refugees from the conflict in Croatia had fled to Bosnia and Herzegovina. After the outbreak of fighting in Bosnia and Herzegovina around March/April 1992, the number of refugees and internally displaced increased to 300,000. It was in the second half of 1992 that the situation reached truly crisis proportions and by December, there were over 810,000 refugees and internally displaced men, women and children in Bosnia and Herzegovina. The policy of ethnic cleansing, including forced transfers of populations, was being pursued to devastating effect.

111. Large numbers of people are still moving from areas of intense ethnic cleansing, such as the Banja Luka region, towards central Bosnia, despite the perilous crossing of the confrontation line which this involves. This has long been a recognizable pattern but it is not possible to say whether it is the result of the closing of Croatia's borders, leaving those seeking refuge no option but to go in this direction, or whether these people are being deliberately pushed towards the confrontation line by ethnic Serb forces.

112. UNHCR is in constant negotiation with the Croatian Government to allow the admission of those who seek refuge. By way of exception the Government has admitted particular groups. However, Croatia already has 700,000 refugees on its territory and it is clear that more international aid for these refugees is needed as well as more international burden-sharing in the acceptance of refugees.

113. In October 1992, the release of detainees (described above) had led to impossible overcrowding at the Croatian transit camp at Karlovac. However, negotiations with the Swiss Government have borne fruit allowing, as a special temporary measure, a transit camp to be set up on Swiss territory. This relieves some of the pressure on the Karlovac camp which now houses some 1,600 persons. However, this agreement applies only to ex-detainees who are assured of asylum in another country.

114. Humanitarian organizations are providing aid under very difficult conditions. The problem of access is particularly acute. Some places have been inaccessible to aid convoys owing to snow or bad roads; others have been made inaccessible by the refusal of the parties to the conflict to allow convoys to pass.

115. There is a constant threat of epidemics in many cities due to the destruction of their infrastructure.

116. It is especially worrying that some places in eastern Bosnia have been inaccessible to aid convoys, human rights monitors and journalists since the beginning of the conflict in March or April of 1992. It may be feared that grave human rights violations have taken place.

117. Furthermore, the humanitarian nature of aid convoys is being respected less and less and all parties to the conflict are creating obstacles to the delivery of humanitarian aid to those in need.

III. CROATIA

118. The Special Rapporteur presented in his report to the General Assembly at its forty-seventh session (A/47/666) the main points of non-respect of fundamental rights in Croatia. He expressed his concern, in particular, about the discrimination against minorities who have been refused citizenship and are subjected to verbal and physical abuses. The strict control by the Government over radio and television and the situation of refugees are other areas of concern mentioned by the Special Rapporteur in this report.

119. During his third mission to the territory of the former Yugoslavia, the Special Rapporteur travelled once more to Croatia. Members of his delegation met with officials of the Government in order to gather information and to follow up on the development of the situation of human rights in that country.

120. Furthermore, the Special Rapporteur received considerable material from non-governmental organizations concerning violations of human rights and war crimes committed by both belligerents during the war between Croatia and Serbia. These cases are being passed on to the Commission of Experts established in accordance with Security Council resolution 780 (1992).

121. The EC Monitoring Mission (ECMM) reported to the Special Rapporteur that in the town of Dubrovnik, a number of Serbian houses have been set on fire, damaged or destroyed. Furthermore, Serbian civilians have been evicted from their homes so that Croats can move in. In this respect, according to the ECMM, "at best the evidence indicates that the army condones such action by its troops. At worst the army itself is acting in a manner incompatible with democratic principles and common justice". Moreover, the ECMM provided the Special Rapporteur with a list of Yugoslav Army soldiers taken as prisoners of war who have allegedly been ill-treated and tortured by the Croatian Army.

122. Representatives of the Serbian minority explained to the delegation that the main issue of concern to them was still the procedure for obtaining Croatian citizenship. They claimed that the time-limit prescribed by the Constitution was not respected and that applicants had to wait for months.

123. The Special Rapporteur received copies of documents issued by the Ministry of the Interior of Croatia refusing citizenship to Serbs living in Croatia. A number of persons were refused Croatian citizenship by virtue of article 26, paragraph 1, of the Law on Croatian Citizenship adopted by the Croatian Parliament on 26 June 1991 and published in the Croatian Narodne novine, Nos. 53/29 and 53/91 [article 26, paragraph 1: "The Ministry of the Interior shall reject any application for the acquisition or loss of Croatian citizenship if the required conditions have not been fulfilled, unless otherwise provided for by the terms of the present Law"]. The Croatian authorities did not give the reasons for these refusals, referring to paragraph 3 of the same article ["the decision to reject the application for acquisition [of Croatian citizenship] does not necessarily have to state the reasons for such rejection"]. In some cases the Croatian authorities stated that the person did not comply with the general conditions for acquiring Croatian citizenship as listed in article 8 of the Law on Citizenship, which reads as follows:

"Art. 8: Croatian citizenship may be acquired through naturalization by any foreign national who has signed a declaration of acquisition requesting the status of Croatian citizen and who fulfils the following conditions:

1. He must be at least 18 years of age and be capable of leading an active life;

2. He must have lost his original citizenship or produce a document proving that he will cease to possess his original citizenship if he acquires Croatian citizenship;

3. He must prove that he has been legally resident in the Republic of Croatia for at least five consecutive years prior to the date of signature of the declaration of acquisition;

4. He must know the Croatian language and the Latin alphabet;

5. He must, through his conduct, demonstrate that he respects public order and the customs observed in the Republic of Croatia and that he adopts Croatian culture.

The applicant will be considered to fulfil the conditions prescribed in the first clause of paragraph 2 of the present article if he is stateless or if the Law on citizenship of the country of which he is a national provides that he will lose his original citizenship as soon as he acquires some other citizenship through naturalization.

If the country of origin does not allow the applicant to lose his nationality or, for this purpose, prescribes conditions which he is unable to fulfil, it will suffice for the applicant who has signed the declaration of acquisition to declare that he will repudiate his original citizenship as soon as he acquires Croatian citizenship."

124. According to the documents received, the precise conditions that were not fulfilled were not cited and the decision refers to the above-mentioned article 26, paragraph 3, of the Law on Citizenship. In some cases it is stated that the person, although complying with the conditions of the Law, will not be granted Croatian citizenship because this does not correspond to the interests of the Republic of Croatia. The Croatian authorities referred in those cases to article 26, paragraph 2, of the Law on Citizenship ["The Ministry of the Interior may reject any application for acquisition or loss of Croatian citizenship even though the prescribed conditions are fulfilled, if it considers that there are reasons of national interest requiring that the application for acquisition or loss of citizenship be rejected."] The precise reasons are not given, again with reference to article 26, paragraph 3.

125. The Special Rapporteur also received documents concerning the implications of refusal of Croatian citizenship, notably that such persons are not entitled to social allowances.

126. Officials of the Ministry of the Interior explained that, until 8 October 1991, every resident of Croatia, regardless of his or her

nationality, could have obtained Croatian citizenship upon rejecting the republican citizenship (under the Socialist Federal system all citizens of the Federal Yugoslavia also had a republican citizenship).

127. Croatian officials further pointed out that due to lack of facilities, the time-limit envisaged by the law could not be respected and applicants had to wait a longer time for the regularization of their status; however, until June 1993, all applicants would not be restricted in exercising their civil, economic and social rights. Those who allege to be victims of discrimination had the right to petition the courts. According to the official records of the Ministry, of 194,000 applications filed, almost 30,000 remain pending. Nevertheless, the Serbian community claim to be victims of discrimination and accuse Croats of having an attitude of rejection and dislike.

128. Since the Ministry of the Interior is in charge of security throughout the country, the police also falls under its control. With regard to dismissal on the basis of ethnic origin, a representative of the Ministry asserted to the mission that almost 15 per cent of the police force are Serbs. No dismissals on those grounds had taken place. He also explained that the secret police had been abolished.

129. The members of the Special Rapporteur's delegation also met with representatives of the Ministry of Justice who described the current judicial system. Death sentences had been abolished. Since the outbreak of war, six Military Courts have been established to deal with military offences, abuses of civilians by the military, terrorism practised by civilians, sabotage, deaths in prison, etc. It is compulsory for three civil judges to be present at every trial. Each defendant has the right and the obligation to be represented by an attorney. An attorney is nominated by the court whenever the defendant cannot afford one. With regard to the harassment of minorities, according to Ministry officials 800 Croats have been charged with nationalistic propaganda and incitement to hatred, terrorism and armed assault against civilians while 40 officers of the Croatian Army were charged with war crimes.

130. The civil judiciary system consists of 99 District Courts which handle minor crimes (up to 10 years of imprisonment) and 14 Regional Courts which handle more important crimes and sit as appeal courts to the lower courts. There is one Supreme Court. Judges are elected by a Commission of Parliament upon the recommendations of the Ministry of Justice. According to the new Constitution, judges are elected for a life term.

131. In the last two years the rate of criminality has risen, due mainly to the state of war and the difficult economic situation which encourages people to commit theft and similar crimes.

132. The economic situation has worsened over the last few years due to several factors. With the exception of Slovenia, Croatia has lost the Yugoslav market for its exports, as well as its former Eastern European and Middle East markets. Slavonia, the richest agricultural region, is not under the State's control. Tourism, one of the most profitable industries, has disappeared over the last three years. Educated people leave the country while instability, due to war, discourages foreigners from investing in

Croatia. The present average salary is equivalent to 80 DEM (one fourth of the average salary of a few years ago). Inflation is very high and rising constantly. There are 261,000 registered unemployed who receive either a minimum salary or welfare assistance.

133. Although the law grants independence and autonomy to the mass media, many journalists, conditioned by the old system, practise self-censorship. For example, one reporter said that certain questions would not be addressed to a member of the Government at a press conference so that further invitations to other press conferences could be expected. It has also been reported that some journalists have been dismissed because of their political opinions. The Special Rapporteur has been informed of the case of five Croatian women intellectuals who were among the first people to denounce soldiers of all sides, including Croatians, for rape. Consequently, they were vilified in a Zagreb weekly magazine. This example, among others, confirms that the Croatian media frequently incite extreme nationalist sentiments.

134. Printing and distribution are in the hands of the VJESNIK printing house, now called TISAK. The chief editors of all dailies and periodicals are appointed by the Board of Directors, which is nominated by the Government.

135. The Radio and Television Council is appointed by Parliament and is in charge of approving the programmes as well as the internal policy of each station. Both radio and television are State-owned and supervised by the same General Director who is, at present, the Vice-President of the ruling Croatian Democratic Union. The Government thus exercises full control over the mass media, in particular radio and television. Journalists believe that the independence and freedom of the press were more respected during the period between 1989 and 1990.

136. The Special Rapporteur visited the Reznik Refugee Centre outside Zagreb. A number of refugees had arrived five days before from Prijedor, Bosnia and Herzegovina. The Centre, a former industrial complex which has been empty for the last 15 years, is accommodating some 3,000 refugees. Once a month they receive food and clothing from UNHCR. The Croatian Red Cross and the Austrian Red Cross take care of their needs together with other humanitarian organizations like Caritas. Aid from individuals is also received from abroad. The entry of refugees into Croatia has been restricted by the Government to those holding a letter from a third country guaranteeing their settlement. Croatian Red Cross records show 700,000 registered refugees and displaced persons, constituting 17 per cent of the Croatian population; 80 per cent of them live with Croatian families. Host families receive material aid from the Croatian Red Cross to enable them support their guests. The refugees (estimated at 540,000) are mostly Muslims from Bosnia and Herzegovina, while the displaced persons (estimated at 260,000) are Croats from UNPAs.

137. The conclusion to be drawn on the basis of the information gathered recently is that the human rights situation in Croatia has not changed significantly since the Special Rapporteur's last report. A considerable number of Serbs are still waiting to obtain citizenship. Various cases of harassment of Serbs have been reported. Freedom of expression in the media

has not been fully realized. The economic situation is difficult and the influx of refugees, most of whom are living with Croatian host families, constitutes a considerable burden for the society.

A. United Nations Protected Areas (UNPAs)

138. As the Special Rapporteur explained in his report to the General Assembly at its forty-seventh session (A/47/666), UNPAs are regions within the territory of Croatia. UNPAs have been established in western Slavonia (Sector West), eastern Slavonia (Sector East), and Krajina (Sectors North and South). In most of the areas within UNPAs Serbs exercise de facto rule. The tasks of UNPROFOR and UNCIVPOL stationed in these areas are mainly geared towards demilitarizing the population, demining the region and facilitating the return of refugees. The difficulties they are experiencing in this regard have not diminished since the Special Rapporteur presented his report to the General Assembly. On the contrary, the renewed outbreak of hostilities has created additional obstacles for the fulfilment of UNPROFOR's mandate.

B. UNPA Sector South

139. Manifestations of ethnic cleansing as described in the previous report continue in this sector which is part of the so-called "Republic of Krajina". The de facto authorities practise discrimination and there is no independent political system.

140. Reliable sources have informed the Special Rapporteur of a number of recent incidents in this sector as follows:

(a) On 18 November 1992, in the village of Rastevic, two old Croatian women were threatened with a knife by a masked man;

(b) On 20 November 1992, in Gornje (near Zeminik), two Serbs were found dead. Both bore head wounds. Footprints leading to and from the Croatian front line were found;

(c) On 22 November 1992, in Skrbrnja, five members of the Serbian militia were shot dead. Due to this incident, the existing tension increased, and UNPROFOR has to ensure the security of the Croatians living in the area;

(d) On 2 December 1992, in Sopok near Benkovac, four Croats were shot dead;

(e) On 5 December 1992, in Goles near Benkovac, a Serb was found shot dead;

(f) On 6 December 1992, in Murvica, one Serb was killed and three others wounded;

(g) On 8 December 1992, in Perusic Gorinja, a Croat was badly wounded in his house.

C. UNPA Sector East

141. The main concern expressed by the Special Rapporteur in his previous report (A/47/666), was the policy of ethnic cleansing practised by militias and local Serbian authorities. The non-Serbs who had not yet left were victims of constant harassment. Catholic churches were destroyed and Serbian refugees were lodged in the houses of those who had left.

142. The Special Rapporteur is also concerned with the unresolved problem of missing persons who disappeared during or immediately after the battle of Vukovar. The ICRC has been seized of those cases and the Special Rapporteur hopes that all authorities and forces concerned will cooperate with the ICRC in its attempts to determine the fate of the missing persons.

143. The Special Rapporteur on extrajudicial, summary or arbitrary executions visited the sector from 15 to 20 December 1992. According to his findings, the de facto authorities of the self-proclaimed Serbian Republic of Krajina (RSK) are vigorously pursuing a policy of ethnic cleansing. The local militia has not been disarmed. On the contrary, a territorial defence force is being re-established. Members of the militia openly carry long weapons an have repeatedly stopped UNPROFOR personnel. The local population is subjected to harassment and intimidation and told not to report to UNPROFOR. In the southern part of the sector, fighting is still going on along the confrontation line. The local police do not cooperate when UNPROFOR passes to them allegations of violations of human rights. A renewed escalation of ethnically motivated violence is feared.

D. UNPAs' Sectors North and West

144. The Special Rapporteur has not received recent information concerning Sector North.

145. With regard to Sector West, the Special Rapporteur on extrajudicial, summary or arbitrary executions has observed that UNPROFOR has excellent working relationships with both Croatian and Serbian authorities. The local police, monitored by CIVPOL, has become a really professional police force, eager to carry out its tasks properly and fully cooperating with UNPROFOR.

IV. FEDERAL REPUBLIC OF YUGOSLAVIA (SERBIA AND MONTENEGRO)

146. In his third report (A/47/666-S/24809) the Special Rapporteur, commenting on the human rights situation in Serbia, stated that "there is a considerable discrepancy between legal rules and norms and the actual implementation of such standards ... The absence of a democratically approved constitutional order and a firm commitment to the Constitution on the part of some political authorities, together with a lack of effective procedures and mechanisms for the protection of the human rights and freedoms recognized in the Constitution, are two factors which contribute to this situation" (paras.89-90). It would seem that these observations are still valid.

147. The local, regional, republic and federal elections that were held on 20 December 1992 were intended to provide democratic legitimacy. The election was observed by international experts, who were assisted by representatives of the CSCE Office for Democratic Institutions and Human Rights. The observers made the following conclusions:

"- The electoral process through 21 December 1992 has been seriously flawed.

"- The pre-election campaign was tainted by shameless propaganda in the state-run media, especially television, that exclusively supported the governing party and either ignored or distorted the message of the opposition.

"- The governing party effectively shortened the opposition's pre-election campaign period by bureaucratic delaying tactics.

"- Voter registration problems were widespread on election day. Observers have estimated that 5 per cent or more of prospective voters were not allowed to participate. A disproportionate amount of these would likely have supported the opposition (considering that many were young people - often first time voters - or those who joined in the boycott of the 31 May elections) ...

"- Other election-day problems noted by some observers included intimidation of voters and low standards for secrecy at polling places.

"- In general, election campaign and election-day problems have not been as severe in Montenegro as they have been in Serbia."

148. The CSCE mission pointed out that "there seems to be sufficient evidence in support of a conclusion that election irregularities have been widespread, enough to invalidate an election in any traditional democracy. At the same time, there are reasons to believe that there has been a groundswell of support for [President] Milosevic, the Socialist (ex-Communist) Party and the Radical Nationalist Party".

149. Independent observers report that instability and tensions in various regions of the Federal Republic of Yugoslavia are caused by a lack of respect

for the rule of law by the law enforcement organs, in particular the police. There are also reports that large numbers of weapons are in the possession of private persons.

150. The situation with respect to the mass media has not improved. The authorities still exercise firm control over television and radio. It has recently been reported that purges are being undertaken in all the media. In addition, universities, theatres and other cultural institutions are being purged of so-called "ideological opponents" under different pretexts. There are warnings from some independent intellectuals that Fascist-like ideologies are enjoying broader and broader social support.

151. The Special Rapporteur is convinced that human rights problems in the Federal Republic of Yugoslavia should not be limited to the situation of minorities or inter-ethnic relations. The influence of the military conflicts in Bosnia and Herzegovina and in Croatia is obvious. There is growing fear among the population in response to increasingly difficult living conditions and aggressive propaganda.

152. It will be recalled that the human rights situation in the Federal Republic of Yugoslavia (Serbia and Montenegro) was examined by the Human Rights Committee at its 1202nd meeting, held on 4 November 1992. On that occasion, the Committee noted the existence of links between Serbia and Serbian nationalists responsible for massive violations of human rights in Croatian territories controlled by Serbian forces and in Bosnia and Herzegovina. This means that the Federal Government cannot be exempt from responsibility for ethnic cleansing conducted in those territories.

A. Kosovo

153. In his report to the General Assembly at its forty-seventh session (A/47/666), the Special Rapporteur expressed his concern about the situation of human rights in Kosovo following a brief visit to Prishtina. The main issues raised concern the mass dismissal of Albanians from the public sector, police brutality, the lack of freedom of the media and problems concerning education. The situation of human rights has been constantly worsening since Kosovo lost its status as an autonomous province in July 1990. The Albanian population has been enduring various forms of discrimination as a result of new laws adopted by the Republic of Serbia and the economic situation has deteriorated to the extent that even the subsistence of many Albanian families is threatened.

154. Since his visit, the Special Rapporteur has continued to receive information from international monitors, in particular the CSCE mission, concerning the human rights situation in Kosovo.

Legal aspects

155. The Special Rapporteur has received a list of laws reportedly discriminating against Albanians. The following paragraphs describe some of these laws.

156. Reportedly, a number of laws, programmes and decrees adopted by the authorities of Serbia contributed to the dismissal of Albanians and the appointment of Serbs and Montenegrins in their places. To this effect the Albanians cited:

(a) The Programme for the establishment of peace, liberty, equality, democracy and prosperity in the autonomous province of Kosovo (Official Gazette of Serbia 15/90 of 30 March 1990), paragraph 3 of which envisages assistance to Serbs and Montenegrins who want to move to Kosovo. Paragraph 9 of the programme implies the dismissal of Albanians from the police force, which was carried out at the time of the abolishment of the Secretariat (i.e. Ministry) of the Interior of Kosovo on 16 April 1990. The places of the dismissed Albanian policemen were taken by Serbs and Montenegrins;

(b) The Law on police institutions (Official Gazette of Serbia 44/91 of 25 July 1991) was used as the legal basis for taking policemen from all over former Yugoslavia to replace the dismissed Albanians;

(c) The Law on the creation of a fund to finance the return of Serbs and Montenegrins to Kosovo (Official Gazette of Serbia 35/90 of 14 July 1990); and

(d) The Programme for the development of the Autonomous Province of Kosovo and Metohia, aiming at the return of Serbs and Montenegrins to Kosovo and Metohia, for 1992 (Official Gazette of Serbia 54/92 of 8 August 1992) provides for assistance to Serbs for building houses, setting up private firms and enterprises, and creating cultural establishments, schools, communications and infrastructure;

(e) The Law on labour relations in special circumstances (Official Gazette of Serbia 40/90 of 26 July 1990) provides for the right of the directors of enterprises to impose on the workers disciplinary measures envisaged by the laws. Given the fact that in a large number of cases directors are Serbs, Albanians complain that this law leads to arbitrary dismissals of Albanians. The introduction of special measures in many enterprises and social institutions led to the discontinuation of their activities and many Albanians lost their jobs as a consequence;

(f) The Law on the conditions, ways and means for distributing agricultural land to citizens who would like to live and work on the territory of the Autonomous Province of Kosovo and Metohia (Official Gazette of Serbia 43/91 of 20 July 1991) envisages making credit available to Serbs who want to move to Kosovo;

(g) The Law on the health service (Official Gazette of Serbia 17/92 of 31 March 1992) allegedly led to the dismissal of many Albanians working in the health sector;

(h) The Law on public information (Official Gazette of Serbia 19/91 of 29 March 1991) led to the dismissal of many journalists and other staff of the Albanian nationality from newspapers, radio and television in Prishtina;

(i) The Law abolishing the Kosovo Law on the educational service (Official Gazette of Serbia 75/91 of 17 December 1991) is said to be the reason that many Albanian teachers lost their jobs.

157. Other discriminatory legal acts against the Albanians in Kosovo concerning education, cultural institutions and the use of the Albanian language were reported as follows:

(a) The laws abolishing those adopted earlier by the legislature of the Socialist Autonomous Province of Kosovo (Law on higher education, Law on university education, Law on the Pedagogical Academy, Law on primary education, the Law on secondary education (Official Gazette of Serbia 45/90 of 7 August 1990) and the law abolishing the Law on the Educational Council of the Socialist Autonomous Province of Kosovo (Official Gazette of Serbia 75/91 of 17 December 1991) destroyed the established system of education for the Albanians in Kosovo on all levels;

(b) The Law establishing the publishing house "Panorama" (Official Gazette of Serbia 80/92 of 6 November 1992) and the above-cited law on public information (Official Gazette of Serbia 19/91 from 29 March 1991) contributed to the enforcement of state control over the mass media in Kosovo. The new agency incorporates the newspaper Rilindja which has been published in Albanian for more than 50 years;

(c) The Law on the official use of the language and the alphabet (Official Gazette of Serbia 45/91 of 27 July 1991) gives priority to the official use of the Serbian language in public institutions;

(d) The Law abolishing the Kosovo Law on the Institute of the History of Kosovo (Official Gazette of Serbia 49/92 of 21 July 1992) hampers the development of knowledge about the national history and culture of the Albanians in Kosovo. To acquire such knowledge Kosovars must address themselves to the respective Serbian institutions;

(e) The Law on the Serbian Academy of Sciences (Official Gazette of Serbia 49/92 of 21 July 1992) served as a basis for the Serbian Academy of Sciences to take over the property of the Academy of Sciences of Kosovo;

(f) The Law on the universities (Official Gazette of Serbia 54/92 of 8 August 1992) envisages in its article 10 that education should be given in Serbo-Croatian. It can be given in the languages of the minorities if the board of the corresponding university or faculty agrees on this. The Albanians claim that this discriminates against them because the boards of the universities are nominated by the Serbian authorities.

158. Albanians see discrimination in the sphere of population policies:

(a) Paragraph 91 of the Programme for the establishment of peace, liberty, equality, democracy and prosperity in the Autonomous Province of Kosovo (Official Gazette of Serbia 15/90 of 30 March 1990) envisages measures for the decrease of the birth rate in Kosovo, which is among the highest in Europe;

(b) The law on public care for children (Official Gazette of Serbia 49/92 of 21 July 1992) provides for families with more than three children (and these are typically Albanian families) to receive from the State much lower allowances for the younger children. Albanians regard these provisions as discriminatory as Serbs usually have small families and thus all their children receive allowances.

159. A Declaration on human rights and the rights of persons belonging to national minorities was adopted by the Serbian authorities and published in the Official Gazette of Serbia 89/92 of 7 December 1992. The Albanians, however, consider that this declaration is in total contradiction with the real facts of violations of minority and human rights in Kosovo.

Police brutality

160. Several reports indicate that, before and after the elections of 20 December 1992, the police adopted a more severe and aggressive attitude towards the Albanian population. It has been reported that searches without warrants of the houses of Albanians have been carried out on a regular basis, and that at least 70 people, including five Serbs, were arrested. According to a recent report by the CSCE mission "the President of the Assembly of the Muslim Community of Serbia, Kosovo, Sandzak and Vojvodina as well as other Muslim personalities have been arrested". According to official sources some of those arrested have been released.

161. Police action has gone beyond arrest and imprisonment and cases of death as a result of shooting or brutality by the police have been reported. During the first two weeks of December 1992, four incidents were reported from Prishtina and three other small towns during which four Albanians were said to have been killed, and two others and a policeman wounded. It has been asserted that the armed forces also participated in the recent incidents. In two clashes with the Albanian community, the armed forces have allegedly killed two people. Furthermore, the following incidents have also been reported:

(a) On 3 December 1992, in the market of Prishtina, a 19-year-old Albanian was shot dead by the police and his older brother wounded in both legs, presumably while selling goods on the black market;

(b) On 18 December 1992, in Dakovica, a young man was beaten to death;

(c) On 19 December 1992, a 32-year-old Albanian from Brovina died in the hospital in Prishtina as a result of police brutality and beatings;

(d) On 24 December 1992, the police arrested a group of Albanians in Prishtina outside the Great Mosque, allegedly without giving any reason for the arrest;

(e) On 25 December 1992, in two villages between Prishtina and Pec, police abuse, maltreatment of the inhabitants and destruction of their food supply have been alleged. According to the information received, police

brutality and harassment has increased in the town of Pec and the surrounding area with the pretext of seizing and collecting arms held illegally by civilians.

162. According to the Albanians the police have adopted a variety of repressive measures in Kosovo with the aim of provoking the Albanian population.

The situation of the mass media

163. With regard to freedom of press, the Special Rapporteur has been informed of a new Press Law adopted by the Serbian Parliament at the beginning of November 1992 to be applied in Kosovo. The federal authorities of Yugoslavia did not approve the law and declared it unconstitutional. This law has established a State-owned publishing house, Panorama, in charge of printing, publishing and distributing all newspapers, periodicals, graphics and books in the three languages, Serbian, Albanian and Turkish. Allegedly, the main objective of Panorama is to absorb all the assets and staff of the existing Albanian Publishing House run by Albanians, as well as the Serbian daily and Turkish weekly. The Government of Serbia is the only authority empowered to nominate and dismiss the members of the Administrative Council, Supervisory Board and the General Manager as well as to approve all the internal regulations of Panorama. Independent and private publications have not been banned by the law but, due to the high cost of printing and distribution, it is highly improbable that independent enterprises can survive. Panorama is considered by Albanian journalists, who until recently have still been able to express the Albanian point of view, as a means of censorship.

164. Since the visit by the Special Rapporteur to Prishtina all Albanian staff of the local radio and television stations have been removed from their posts. The surviving 15-minute daily television programme in Albanian is allegedly produced and presented by Serbian journalists who speak Albanian.

Dismissals

165. The Special Rapporteur was recently informed by the CSCE mission that in accordance with a law adopted by the Serbian Parliament nine regional medical departments and the hospital of Dakovica Medical Centre were closed and integrated into the Pec Medical Centre. The authorities claimed that this decision was taken on the basis of the difficult economical situation, while Albanian physicians asserted that the reason for this law was political. The Dakovica Medical Centre was among the rare organizations where the overwhelming majority of staff was still Albanian, and thus was the preferred place of treatment by the entire Albanian community of the province.

166. With regard to the judiciary, the Special Rapporteur has been informed that since his visit to Kosovo, all remaining Albanian judges or magistrates have been dismissed. Under such conditions the right to a fair trial and the impartiality of the judiciary can hardly be guaranteed with regard to the Albanian population of Kosovo.

Economic situation

167. With regard to the economic situation in Kosovo the Special Rapporteur has been informed that the regression is such that even Serbian refugees are unwilling to move there. Albanians work mostly in the private sector, mainly in small grocery stores, which allows the owners to meet their basic needs. A large number of Albanians, mainly dismissed civil servants, live in extremely poor conditions. The rate of inflation is very high and rising continuously. The few Albanians who have the opportunity to do so leave Kosovo.

168. A charitable organization, the Financial Council, financed by voluntary donations mostly from Albanians living in Western countries, has been set up by the Albanians of Kosovo. Welfare cases are taken care of by the Financial Council and about 80,000 families registered by the organization are receiving material help.

Education system

169. The Special Rapporteur was informed that the problems outlined in his previous report concerning the education system have not yet been solved. Albanian high schools and the university are closed. Some 70 per cent of the primary schools are operating following Albanian-language curricula; however, Albanian teachers do not receive any salary since they refuse to teach according to the Serbian programme and are helped by the above-mentioned Financial Council.

Elections

170. As regards the elections of 20 December 1992, the CSCE reported that "in Kosovo Albanians generally did abstain, although there are reports that some - maybe between 5 to 10 per cent - did nevertheless take part. The Mission in Prishtina has reported the presence of armed police inside some polling stations and confused and disorganized arrangements for the completion of ballots". The CSCE Mission observed that "the electoral law did not provide for envelopes in which the voters should insert the ballot papers, before throwing them into the ballot boxes ... . The lack of visually protected sites (with curtains) where the voters would secretly make their choice violated the secrecy of voting, as voters openly were making their choice and even cooperated with each other". According to the CSCE report, "the outcome of the 20 December 1992 elections has caused concern among Albanians in Kosovo ... . The presence of Arkan, an alleged war criminal, in the Serbian Assembly is viewed with great concern". Therefore, according to the CSCE, "on the Serbian side the rhetoric has grown harsher after the hard-liner won the elections and more moderate forces no longer are represented among the elected legislators from Kosovo", which could in the long term entail more deprivation of rights for the Albanians.

Conclusion

171. The conclusion to be drawn on the basis of the recent information gathered is that the human rights situation in Kosovo has not improved. On the contrary, the police have intensified their repression of the Albanian population since 1990. The Albanians continue to be deprived of their basic

rights, their education system has been largely destroyed, they are victims of dismissal for political reasons and they face a very difficult economic situation. However, it must be stressed that until now they have resisted peacefully.

B. Sandzak

172. In his report to the General Assembly at its forty-seventh session (A/47/666), the Special Rapporteur described the situation of Muslims, many of whom have been victims of terrorist acts carried out by Serbian paramilitaries and extremists with the aim of intimidating them and forcing them to abandon the area. The cities of Pljevlja, Prijepole, Priboj and Bjelo Polje have been identified as places where Muslims have been harassed on a large scale by means of verbal and physical threats. Some cases of abduction have also been reported. Houses have been set on fire or destroyed by bombs. Consequently, a large number of Muslims moved out of the region, while at the same time refugees from Bosnia and Herzegovina arrived.

173. The Special Rapporteur would like to stress that the communication he had received concerning the destruction of mosques (see A/47/666, para. 116) contained exaggerated information; and in reality, the mosques were only damaged.

174. It appears from the recent information communicated in particular by the CSCE mission to Sandzak that the region bordering Bosnia and Herzegovina is the most unstable and critical zone of Sandzak.

175. The above-mentioned cities have again been mentioned in connection with recent acts of intimidation and harassment against Muslims. In Pljevlja, some 240 paramilitaries, the so-called White Eagles, were said to have carried out criminal acts, with the connivance of the federal army, against Muslims and their belongings. They have allegedly been responsible for the following incidents:

(a) On 30 December 1992, a 21-year-old Muslim was killed. Insecurity and fear has forced a large number of Muslims to leave the district;

(b) On 1 January 1993, a bomb was thrown into a house, causing damage;

(c) On 6 January 1993 (Orthodox Christmas), the minaret of the Huseinpeca mosque in the centre of the town was damaged as a result of shooting by uniformed men.

176. As regards Priboj, the situation has been reported as grave, in particular in the surrounding villages. Buses are allegedly reserved for Serbs only and Muslims have to walk, sometimes for more than four hours, in order to reach the town. Several persons of Muslim origin have reportedly been abducted while walking to the city. Allegations concerning the burning of houses during the month of January 1993 in the villages of Voskovina and Sjeverin, both in the district of Priboj, have also been reported.

177. In Novi Pazar, no terrorist acts have been reported in spite of a continuing climate of tension. The three tanks of the federal army that have

been stationed on the hills not far from the centre of Novi Pazar since 3 October 1992 were removed by the end of November 1992. The Muslim population expressed relief when the tanks were removed.

178. The Special Rapporteur has also been informed that Muslims' houses in Sandzak are frequently searched without warrant and their goods confiscated by the paramilitary forces which claim to act on behalf of the police. It has been noted by the CSCE mission that "as long as the federal Government is too weak to keep the republican police apparatus from being a tool of the Serbian political power structure, a relatively high degree of lawlessness and fear will prevail in the region".

179. With regard to the living conditions, the lack of fuel for heating and problems of transportation of goods, in particular food and medicine, to Sandzak are considered major problems for the entire population. The state of sanitation and hygiene is giving rise to major concern. Under such conditions the influx of Bosnian Muslim refugees can be considered to be a considerable burden for the local population, with whom they are lodged. An obvious consequence of this is increased tension between the Serbian and Muslim populations of the region.

180. As regards the elections of 20 December 1992, the CSCE mission stated at a first stage "... that the elections are welcomed by both ethnic groups, the Muslims and the Serbs". Later, the CSCE mission reported that "subsequent to the summit of Islamic countries in Jeddah, the Party of Democratic Action reversed its earlier decision to participate in the upcoming election ... Ostensibly, this pulling out of the electoral process was occasioned by the failure of the federal and republican authorities to comply with any demands of the Party of Democratic Action".

181. According to the information gathered, the human rights problems in Sandzak have became worse. The Muslim community is increasingly under pressure and the influx of refugees from Bosnia and Herzegovina has further aggravated the already existing tension. The economic situation is declining and life in all its aspects is becoming more and more difficult for the entire population of Sandzak. Against this background the high degree of "lawlessness", as reported by the CSCE mission, constitutes a considerable threat to the stability of the region.

C. Vojvodina

182. The Special Rapporteur, in his report to the General Assembly at its forty-seventh session (A/47/666), described in some detail the situation of Hungarians, who constitute the biggest minority among the population of Vojvodina, as well as that of Croats and other minorities since the province lost its autonomous status in 1990. Verbal and physical threats and other acts of intimidation, including setting houses on fire and destroying cultural and religious monuments, have been practised by the Serbs. A considerable number of Hungarians and Croats have left the province, mainly because of the climate of insecurity prevailing since the loss of autonomy and subsequent reinforcement of Serbian rule. Young men who refused to serve in the Serbian army have also fled. The fighting in other parts of former Yugoslavia has led to a considerable influx of Serbian refugees which, together with the

departure of Hungarians and Croats, has changed the ethnic structure of the province and has aggravated the tensions between the different communities.

183. During the last few months, information similar to that reflected in the previous report, especially concerning cases of intimidation in the region of Srem/Backa, has been received by the Special Rapporteur. It has been reported that in Srem, many people, mainly Croats, have left the villages of Hitkovci, Kijevci and Novi Slankamen as a result of threats and the bombing of houses. In the villages of Beska and Golubinci, the whole Croat population has left.

184. It has been reported that minorities have been harassed by having shots fired at them and by threatening telephone calls and letters, and that some have been physically threatened and their houses bombed. It is alleged that the police have acquiesced in some of the incidents which have been attributed to individuals.

185. The drafting of young men of all origins still constitutes one of the concerns of the non-Serbian population who do not wish to become involved in hostilities against other national groups. Summons for military service and mobilization are no longer by official letter, since that procedure allowed sufficient time for young men who wanted to avoid military service to leave the region. Men are now taken by the police from their places of work to serve in the army.

186. According to official sources, school programmes in ethnic languages are provided on the condition that there are at least 15 students. If such is not the case, the language is taught as a foreign language. The Serbian language is now obligatory for all students, while Hungarian is no longer required for Serbian students.

187. Under a new press law, the independence of the only Hungarian daily has been curtailed. According to the minorities, radio and television programming in their languages is limited to translations of Serbian news broadcasts. Official paper supplies are no longer provided on a regular basis to the ethnic press and they consider that the financial aid given by the authorities is inadequate.

188. The Special Rapporteur received many reports concerning the declining economic situation, the constantly rising inflation and the difficulties experienced by the local population in obtaining basic goods and medical care.

189. During the election campaign for the elections of 20 December 1992, the leaders of the Hungarian and Croatian parties were allegedly harassed and intimidated. Both groups took an active part in the elections and invited the population to participate. As a result, the Hungarian political party is represented in the House of Citizens of the Federal Assembly, in the Assembly of the Republic of Serbia and in the Provincial Assembly of Vojvodina; it obtained 55 per cent of the seats in the City Assembly of Subotica. The Croatian political party did not succeed in being represented at the federal level, but is represented in the Provincial Assembly and other local assemblies. Croats and Hungarians together obtained two thirds of the seats

in the City Assembly of Subotica. According to the CSCE mission, "in Serb-dominated areas in the southern part of the province, the Socialist Party and the Serbian Radical Party carried the day".

190. The continuing pressure exerted upon the non-Serbian part of the population together with the growing number of Serbian refugees exacerbate the tensions between the various communities. The harassment of minorities continues, as does the compulsory drafting of men into the army. The control of the Serbian authorities over the education system and the mass media has been tightened and, due to the economic crisis, living conditions in general are deteriorating. As pointed out by the CSCE mission, "one might say that a considerable part of the Serb population in Vojvodina is inclined toward nationalist ideas as a reaction against the relatively strong force of minorities". These factors demonstrate the uncertainty of the situation, which cannot be considered as conducive to the full enjoyment of human rights.

V. SLOVENIA

A. Introductory remarks

191. The Special Rapporteur during his third mission to the former Yugoslavia visited the Republic of Slovenia. He met with the President of the Republic, government representatives, politicians, representatives of Italian, Hungarian and German minorities, the Archbishop of Lubljana, a representative of the Protestant community and a representative of the Serbian Orthodox church. He had discussions with members of the Council of Human Rights and Fundamental Freedoms, representatives of the media and UNHCR delegates.

192. The Republic of Slovenia has some 2 million inhabitants. The population is predominantly Slovene. According to official statistics dating from 1991, there are about 53,000 Croats, 47,000 Serbs and 26,000 Muslims who are permanently resident in the country. There are also small indigenous Italian and Hungarian minorities.

B. Legal and institutional framework of human rights protection

193. Slovenia adopted its Declaration of Independence on 25 June 1991. The declaration emphasizes, inter alia, the strict adherence of Slovenia to the Charter of the United Nations, the Helsinki Final Act and other documents adopted within the framework of the CSCE. The new Constitution of the Republic of Slovenia was proclaimed at a joint session of the three chambers of parliament on 23 December 1992. The Constitution, in part II, sets out human rights and fundamental freedoms. Article 14 guarantees "equal human rights and basic liberties" to each individual. Provisions concerning non-discrimination can be found in article 16 and in other specific contexts - electoral rights, right to work, etc. Advocacy of discrimination and incitement to racial and other similar forms of hatred are strictly prohibited (art. 63). According to article 61, "all persons shall have the right freely to express affiliation to his nationality or national community ...". Article 62 guarantees to all persons "the right to use their own language and script in the realization of his/her rights and duties and in procedures before state and other bodies which perform public service ... ". The Constitution confirms, in article 64, the rights of Italian and Hungarian minorities. These rights include the use of the communities' national symbols, the right to foster relations with Italian and Hungarian communities outside Slovenia and with Italy and Hungary, and the right to education in their own languages.

194. The basic instrument of protection of human rights contained in the Constitution is judicial protection. The Constitutional Court is given jurisdiction over matters relating to breaches of the Constitution involving individual acts infringing human rights and fundamental freedoms. The Constitution also contains the necessary safeguards for the independence of the judiciary.

195. The Constitution provides, in article 159, for the appointment of the "Protector of the rights of citizens" (an ombudsman).

196. In summary, the Constitution provides for all necessary forms of human rights protection. The actual functioning of the necessary institutions remains to be determined.

197. During the last few years the Council of Human Rights and Fundamental Freedoms has played an important role in the protection of human rights. The Council was established by statute on 16 April 1990. The Council is an independent body. It has both a general supervisory role and the function of dealing with individual complaints. In many respects its functions are comparable to those of an ombudsman. The Council has access to all information, and governmental agencies must provide every assistance demanded by the Council and respond to its recommendations. The Council appears to be very effective in its protection of human rights.

198. A committee of lawyers has been established by the Ministry of the Interior to examine complaints against the police. In a number of cases disciplinary or criminal proceedings have followed.

199. Citizenship of the Republic of Slovenia is regulated by the Citizenship Act of June 1991. The law stipulates, inter alia, that citizens of another republic who resided in Slovenia on the day of the plebiscite on independence shall be granted citizenship upon application. The implementation of relevant provisions of the above-mentioned law raises no reservation. The vast majority of residents in Slovenia automatically became citizens of the republic.

200. The Special Rapporteur has been informed that there have been about 170,000 applications for citizenship. More than 160,000 have been already dealt with, while 10,000 are still pending. A total of 167,922 persons who are not of Slovene nationality obtained citizenship last year, including 79,897 from Bosnia and Herzegovina. In addition, 19,000 citizens of Bosnia and Herzegovina living in Slovenia have permanent or resident status. Relatively few applications - about 2,000 - were rejected.

201. The Special Rapporteur is of the opinion that the Republic of Slovenia has managed to solve the citizenship issue without creating a feeling of discrimination or insecurity among its inhabitants.

C. Elections in Slovenia

202. On 10 September 1992 the Slovene parliament approved the Electoral Law. According to its provisions each citizen of Slovenia who has attained the age of 18 and who is not suffering from a mental disorder has the rights to vote and to be elected to office.

203. An ad hoc committee appointed by the Bureau of Parliamentary Assembly of the Council of Europe to observe the presidential and parliamentary elections in Slovenia, held on 6 December 1992, concluded unanimously that: "the elections had been free and fair. They had been held in a calm and politically mature atmosphere. No excessive propaganda could be seen on the streets. Procedure at the polling stations was properly conducted and the officials in charge seemed to work professionally and efficiently. The procedure was the same in the capital and the countryside. All the parties

had access to the media". Also, a CSCE mission sent by the CSCE Office for Democratic Institutions and Human Rights in Warsaw confirmed the free and fair character of the election.

D. The refugee problem

204. More than 70,000 refugees from Bosnia and Herzegovina came to Slovenia. More than half of them are children, around 40 per cent are women, and the remainder are for the most part older men.

205. About 15,000 temporary refugees are accommodated in 58 collection centres throughout Slovenia, the majority of these being former army barracks which are administered by the Office for Immigration and Refugees and operate with the assistance of the Red Cross and of various voluntary groups. The remainder, approximately 56,000 refugees, are staying for the moment with friends and relatives, who frequently have social problems of their own or are unemployed. Some 51,000 refugees are registered with the Red Cross of Slovenia; all others are unregistered.

206. Only those who have been registered enjoy "temporary refugee status". It is necessary to mentioned that this concept has no legal basis and is not defined in international instruments. All refugees who entered Slovenia before 10 August 1992 obtained temporary refugee status. Slovenia then closed its borders to refugees other than those with papers guaranteeing their acceptance by a third country, who are allowed to transit; those "sponsored", e.g. for the purpose of family reunion; or those in "special need". However, representatives of UNHCR have informed the Special Rapporteur that family members are still denied admission into the country.

207. Under the provisions of the law on foreigners, those who enter illegally may be expelled within a period of 48 hours. Such decisions are taken by the Ministry of the Interior on the advice of the Office for Immigration and Refugees. The number of refugees being turned back was between 70 and 150 a day in November and as many as 200 a day in October. The Special Rapporteur raised this problem during discussions with the Minister of the Interior. He has been informed that the country's reception capacity is exhausted. In certain areas, e.g. in parts of northern Slovenia which has a large population of migrant workers originating from Bosnia and Herzegovina, refugees who have come to live with relatives or friends may make up as much as 10 per cent of the population. Resentment is already building up on account of the additional burden resulting from their presence.

208. The Special Rapporteur has been informed that according to the Government's estimates there were about 17,500 school-age refugee children (7-16 years old) from Bosnia and Herzegovina in Slovenia. The children are attending regular Slovene schools and a three-hour special afternoon programme is provided in their mother tongue. In addition to funds from government sources, this special education programme is being funded by the International Islamic Relief Organization, the Soros Foundation, UNICEF and UNHCR.

209. Refugees are not permitted to seek employment other than that connected with the functioning of the refugee centres. Their freedom of movement inside the country is also restricted.

E. Freedom of speech and the press

210. The Constitution provides for freedom of thought, speech, public association, the press and other forms of public communication and expression.

211. The print and electronic media are only partly privatized. Public ownership still dominates. There are five major dailies and numerous weeklies. One television channel is privately owned and operated. In cooperation with the Council of Europe draft new legislation on the media has been prepared; however, it has not yet been passed. The control of the Government, in particular in regard to television, seems to be strong. It has been reported that a television journalist, in spite of the protests by the journalists' trade union, has been suspended for one month because of his comments on a statement by a Slovene politician.

212. Newspapers tend to be affiliated with political parties. During his meeting with representatives of the mass media the Special Rapporteur was informed that self-censorship still remains a problem for many journalists.

F. Conclusions

213. The Commission on Human Rights, in its resolution 1992/S-1/1 of 14 August 1992, requested the Special Rapporteur "to investigate first-hand the human rights situation in the territory of the former Yugoslavia ...". The denomination "former Yugoslavia" covers, among others, Slovenia. It should be recalled that the CSCE Human Rights Rapporteur Mission which visited Slovenia in January 1992 stated that "despite certain shortcomings, the situation of human rights and protection of minorities in Slovenia may be considered rather satisfactory". The follow-up mission stated in its report, issued in May 1992: "It is the impression of the Mission that authorities in Slovenia are genuinely committed to the rule of law, democracy, and human rights. Slovenia is able fully to implement the CSCE principles and commitments in these fields".

214. The Parliamentary Assembly of the Council of Europe entrusted Messrs. F. Matcher and B. Hall to report on the legislation of the Republic of Slovenia. In their report, dated 31 August 1992, they stated: "our conclusion is that Slovenian legislation is, or will shortly be, compatible with the Council of Europe's basic legal standards, and in some respects appears to give even more protection to the individual than those standards require".

215. The Special Rapporteur shares the views expressed above. However, it is obvious that Slovenia is still in a process of transition to a democratic society, which influences the implementation of various human rights. Certain important problems have not yet been satisfactorily resolved including restoration of property rights, pluralism in the media, etc.

216. Based on information received during his mission and obtained from various international and domestic sources, the Special Rapporteur would like to express his opinion that in the context of the human rights situation in the former Yugoslavia, the situation in the Republic of Slovenia does not at present give rise to major concern.

VI. MACEDONIA

A. Introductory remarks

217. Unlike other former Yugoslav republics, Macedonia has managed to avoid a military conflict since its Government authorities reached an accord for the peaceful withdrawal of the Yugoslav national army from the territory. The peaceful method of building a democratic society creates favourable conditions for the protection of human rights in the country. Nevertheless, one should be aware that the situation in Macedonia is far from stable. Macedonia, with some 2 million inhabitants, is struggling for international recognition. Its economic and social life has been deeply affected by the military conflict in Bosnia and Herzegovina and by the sanctions imposed against Yugoslavia (Serbia and Montenegro). These sanctions influenced negatively the traditional market for its products since economic links were broken. Since more than 40 per cent of the Macedonian population belong to ethnic groups other than that of the majority Slavs, relations between them play a decisive role in the overall human rights situation.

218. The Special Rapporteur during his mission in Macedonia put special emphasis on the situation of the different national communities and on the problem of freedom of the press. He held discussions with the President of the Republic and other representatives of Macedonian authorities, members of parliament belonging to different political parties, including opposition parties, representatives of all nationalities, independent intellectuals and representatives of the mass media. He met with members of the CSCE Spillover Monitoring Mission and UNHCR delegates. The Special Rapporteur also visited a refugee centre near Skopje.

B. Constitutional regulations

219. The Republic of Macedonia is a parliamentary democracy. The Assembly of the Republic of Macedonia was elected in free elections held in November 1990. The legal framework for the protection of human rights has been established by the Constitution, adopted on 17 November 1991. The Constitution embodies the democratic structures and the guarantees for human rights which are generally in operation in Europe. The Constitution contains a number of special provisions aimed at the protection of national minorities. 1/ The most important rules are expressed in article 48, which guarantees the following rights:

1. Citizens belonging to all nationalities have the right to free expression, cultivation and development of their national identity and national attributes.

2. The ethnic, cultural, linguistic and religious identity of all nationalities is protected.

3. Citizens belonging to nationalities have the right to set up cultural and artistic institutions and educational and other associations in order to enable them to express, cultivate and develop their national identities.

4. They also have the right to be educated in their own language at both primary and secondary levels.

220. In schools where instruction is given in the language of one of the other nationalities, the Macedonian language must also be taught.

221. In the context of article 48 it is noteworthy that representatives of the Albanian community complained that the use of national flags and symbols is not mentioned.

222. Important provisions are contained in article 45 according to which any citizen may set up a private school at any educational level except primary. Article 19 (4) provides that religious communities are also entitled to establish schools.

223. As far as language and script are concerned, article 7 (2) provides that in communities where the majority of the inhabitants belong to another nationality, the language and script of that nationality must be used for official purposes, alongside the Macedonian language and the Cyrillic alphabet. Article 7 (3) makes the same provisions for communities where a substantial number of inhabitants belong to a given nationality. These constitutional rules have yet to be defined in precise terms by ordinary legislation; consequently, they are not yet applied. Article 9 (1) of the Constitution prohibits any discrimination on the grounds of race, colour, national and social origin, or political or religious convictions.

224. Certain controversies are associated with the following part of the preamble: "Macedonia is established as a national state of the Macedonian people, in which full equality as citizens and permanent coexistence with the Macedonian people is provided for Albanians, Turks, Vlachs, Romanies, and other nationalities living in the Republic of Macedonia". Albanians are not satisfied with their constitutional status as a "nationality". In their opinion they should enjoy the same constitutional status as Macedonians of Slavic origin since they regard themselves as a constituent nation within multi-ethnic Macedonia. 1/

225. Also, representatives of the Serbian and Muslim nationalities point out that the Constitution does not recognize them as national minorities. The reason is that in the former Yugoslavia both nationalities were so-called constituent nations of the former State and therefore not considered as minorities; however, that situation no longer exists.

226. The Constitution, by article 78, establishes a Council for Inter-Ethnic Relations as an advisory parliamentary body. It is composed of the President of the Assembly and two members each from the ranks of the Macedonians, Albanians, Turks, Vlachs and Romanies, as well as two members from the ranks of the other nationalities in Macedonia. This composition has been criticized by Serbs and Muslims, who demand equality with other nationalities.

227. The Constitution also provides far-reaching guarantees concerning personal freedoms. According to article 12, persons who are detained must be arraigned in court within 24 hours from the moment of detention. The maximum duration of detention pending trial has been set at 90 days. The accused must

be informed of his/her legal rights and the reason for the arrest and detention. The accused is entitled to contact a lawyer at the time of arrest and to have a lawyer present during police and court proceedings. According to article 13, a person unlawfully detained, apprehended or convicted has a right to legal redress and other rights defined by law.

228. According to article 98, Macedonia's courts are autonomous and independent. The Constitution, in article 104, establishes the Republican Judicial Council composed of seven members. An implementing law for that Council was passed in late 1992. All judges will be selected by the Council and confirmed by parliament. The Special Rapporteur has been informed that the election of new judges would be accomplished by 1 April 1993.

229. The Constitutional Court, according to article 110, among others, "protects the freedoms and rights of individuals ...". So far, however, the Court has not yet been called upon to exercise this function.

230. Among various difficult problems arising as a result of the disintegration of the former federal Yugoslav State, the question of citizenship is one of the more controversial ones. On 27 October 1992 the Macedonian Assembly adopted a citizenship law. All persons who in accordance with the old regulations were citizens of the Republic of Macedonia are automatically considered citizens of the Republic of Macedonia under the new law. In the context of the former Yugoslavia the following provisions of article 26 (3) are very important: "Citizens of other republics of the former Socialist Federal Republic of Yugoslavia and citizens of the former Socialist Federal Republic of Yugoslavia who have reported a place of residence in the territory of the Republic of Macedonia may acquire citizenship of the Republic of Macedonia if, within a year after this Act has entered into force, they submit a request, and provided that they have a permanent source of income, are of legal age and before the submission of the request they have been legally resident in the territory of the Republic of Macedonia for at least 15 years". It has been argued that this law precludes recent refugees from other former Yugoslav republics, as well as people from elsewhere, from becoming citizens easily. For that reason ethnic Albanian deputies did not participate in the parliamentary vote on that law. However, it is difficult to argue that these solutions violate any recognized international standards.

231. According to article 2 (1) a citizen of Macedonia may also hold citizenship of another State.

C. Situation of nationalities

232. It is obvious that legal provisions, however important, are not sufficient to solve all existing human rights problems. Albanian political leaders have been voicing demands for greater representation in local government and access to the country's school systems, media, public sector jobs, etc. They have also issued a demand for autonomy or the "federalization" of Macedonia. The CSCE mission pointed out that these requests "reflect the minority's increasing frustration over, first, the lack of tangible changes in the social status, employment rights, and financial plight of ethnic Albanians throughout the Former Yugoslav Republic of Macedonia, and, second, its inability to obtain passage of PDP-NDP (Party of

Democratic Prosperity - National Democratic Party) draft legislation in the Parliament". Macedonian citizens of Albanian origin are undoubtedly suffering different forms of discrimination. Their presence in the organs of the state administration is very often symbolic. The unemployment rate is much higher among Albanians than among Macedonians. Even in the factories located in predominantly Albanian areas the percentage of employed Macedonian Slavs is higher. The case of the "Jughorm" enterprise in Tetovo has been brought to the attention of the Special Rapporteur in that context.

233. It should be recalled that in spite of a gradual broadening of minority rights ensured by the former federal Yugoslav State, the Albanians in Macedonia never achieved representation that was proportional to their numbers in any sector. At present they have 23 seats out of 120 in the national legislature. The present Government, in which representatives of Albanians hold 5 ministerial posts out of 23, is undertaking steps aimed at changing this situation.

234. The Special Rapporteur during his talks with government officials was informed that certain steps have been taken to increase the number of Albanians in the public service. The very small number of them in the police forces and in the administration of justice raises special concern. Nevertheless, the percentage of members of different nationalities in the police has risen from 2.5 per cent to 6 per cent. In order to facilitate this increase enrolment quotas have been set in the Skopje Faculty of Security (15 per cent) and in the Police High School (15-17 per cent).

235. Of great importance is the realization of the right to education. Albanian-language schools exists at the primary level; however, Albanians believe there is an insufficient number of them at the secondary level. As a result only 15 to 20 per cent of Albanians can continue their education in their mother tongue at the post-primary level. The Special Rapporteur has been informed that the Government favours broadening Albanian-language educational opportunities, resources permitting. Authorities are also undertaking efforts aimed at increasing the number of Albanian and national minority students at the university. A quota system (10 per cent) has been introduced. Nevertheless, the long-held grievance that there is no Albanian-language university has been intensified in the light of the closing of the Albanian university in Prisztina.

236. The educational problems with which the Republic of Macedonia has been confronted are not limited to one national group. Others - Turks, Muslims, Serbs - are complaining about the present situation in that field. The Special Rapporteur has been informed about a recent incident in Zupa, near Debar, concerning school instruction in the Turkish language.

237. According to the report of the CSCE Spillover Monitoring Mission: "the mission will continue to follow this matter but with awareness that it may, in the final analysis, prove to be mainly a local dispute with a local solution".

238. A very serious and violent clash between some Albanians and the police occurred in Skopje on 6 November 1992. The Special Rapporteur received detailed information about that incident from the CSCE Monitoring Mission in Skopje. It is to be recalled that as a result of that riot four persons

(reportedly, three ethnic Albanians and one Macedonian Slav) had died and approximately 30 persons (half of whom were policemen) were injured. The CSCE Mission made the following conclusions based on the reliable information:

> "The Interior Ministry - or at least local policemen in the Bit Bazaar - is at fault for choosing to crack down on small-time illegal traders in the market at a time when the city was already fully charged with ethnic tension;
>
> "The policemen who beat the Albanian teenager in front of the local hospital used excessive force in attempting to arrest a young cigarette dealer whose work, and that of his colleagues, had been tacitly permitted in the Bazaar up until that point ...;
>
> "The police are likely at fault for firing guns into the air to dispel the protestors when tear gas alone almost certainly would have sufficed ...;
>
> "Correspondingly, the Albanian protestors are likely at fault for first turning their guns on the other side;
>
> "Although the protest was undoubtedly not as orchestrated and planned as some government and VMRO-DPMNE (International Macedonian Revolutionary Organization - Democratic Party of Macedonian National Unity) party officials claim, radical elements within the Albanian community are at fault for stirring up a protest which they should have known could easily get out of hand in a time of extreme ethnic tensions in the capital and, particularly, in the Bit Bazaar and Sevar;
>
> "Former Yugoslav Republic of Macedonian nationalists' claim that Serbia or Serbian pawns were somehow involved in organizing the protest and subsequent clashes is virtually implausible; however, Interior Minister Frckovski's statement (at a 7 November press conference) that large numbers of participants in the riot were not from Macedonia and have no relation with Macedonia whatsoever - here, we take him to be referring to Kosovo Albanians - is indeed possible if not probable; and
>
> "Stories in the Former Yugoslav Republic of Macedonian press reporting on the wide availability of illegal arms in the Charshia and, specifically the Bit Bazaar, are almost certainly correct, as is the widespread belief in the region that ethnic Albanians in Skopje possess light weaponry; although Mission members found that very few Albanians were actually engaged in gunfire with the police, the extent to which ethnic Albanians in the Sevar are armed remains unknown."

239. A series of incidents occurred in a village in Kuceviste where a disturbance, featuring Serbian nationalist slogans and rock throwing, occurred on New Year's Eve and continued on New Year's Day. The Special Rapporteur has been informed that there is no evidence that anyone was killed and only one policeman was injured. Smaller incidents and clashes were reported to have occurred in the Skopsko Crna Gora area after the Serbian elections of 20 December 1992.

240. The incidents described above show very clearly that interethnic relations in the Republic of Macedonia are of very delicate nature and are far from being stable.

D. Mass media

241. The Constitution, in article 16, guarantees freedom of speech, public address, public information and the establishment of institutions for public information. The same article forbids censorship. The Special Rapporteur is of the opinion that these freedoms are generally respected. The Prime Minster informed him that the Government intends to abolish the Ministry of Information. Foreign observers point out, however, that certain elements of governmental control over the media are observable. The homogenous character of the media coverage of the Bit Bazaar riots supports such arguments.

242. There are four daily newspapers in Skopje and a number of weekly publications. There are also Albanian and Turkish newspapers published three times weekly. Macedonian Radio-Television (MRT) is State-owned. It transmits programmes in the Macedonian, Rom, Turkish, Albanian and Vlach languages. There are currently three television and four radio stations controlled by MRT. The Special Rapporteur has been informed that there are plans to expand TV and radio programmes in Albanian, Turkish, Vlachs and Rom and to create programmes in Serbian.

243. There are several small private radio and television broadcasters throughout Macedonia.

244. Albanians are not satisfied with the existing situation in that regard. They are in favour of one television channel being broadcast in Albanian. The Serbian minority complains about the lack of TV and radio programmes in their language. Also, other minorities are not fully satisfied with the existing state of affairs. It seems, however, that the unsatisfactory situation with respect to the media, in particular the electronic media, is caused by a lack of adequate resources rather than deliberate government policy. Macedonians are also complaining about the quality of the programmes and sometimes are refusing to pay subscriptions.

245. Full pluralism of the media in Macedonia has not yet been achieved. Nevertheless, it is worthwhile noting that, unlike in other former Yugoslav republics, the Macedonian media have never incited national hatred or were in any other way engaged in an infamous "media war" which had and still has dramatic consequences in other regions.

E. The refugee problem

246. As of 16 November 1992 there were 31,452 officially registered refugees in Macedonia from Bosnia and Herzegovina (28,704), Croatia (2,508) and Albania (240). These figures indicate all the registered refugees. However, as many of them, both registered and unregistered, have left Macedonia for Western countries, UNHCR assistance is presently being distributed - through the Macedonian Red Cross and its local branches - to about 21,000 persons. The Macedonian Government officially closed its border to new refugees in early July 1992, referring to the country's harsh economic situation as well as to

the agreement with the Government of Bosnia and Herzegovina not to allow men between 18 and 60 years of age to enter Macedonia. However, the Macedonian authorities took a rather flexible approach and allowed most women and children to enter and to receive assistance. Although men, in particular, have problems registering as refugees, UNHCR was able to undertake several successful interventions with respect to family reunification. Once the refugees leave Macedonia, they are not allowed to re-enter. Rejected asylum seekers have either been sent to Western Europe or transported under police escort to the Serbian border. The Macedonian Government has issued travel documents allowing the refugees to exit Macedonia but without the right to re-enter.

247. Initially all the refugees were staying with host families, but more than 14 per cent of the refugees are now accommodated in collection centres. They enjoy the same right to health care as Macedonian citizens. However, there is a lack of medicines and proper medical equipment in the entire country. Many of the children who arrived during the spring semester continued their education in Macedonian schools. However, after the summer break the admission of refugees to such schools has been problematic, partly due to reluctance on the part of the Government and partly due to the lack of resources for schoolbooks, paper, etc. In some of the collection centres basic education is provided on a voluntary basis.

F. Conclusions

248. An arbitration commission established by the European Community, the so-called Badinter Commission, has considered Macedonia's request for international recognition. The Commission has based its consideration, among other things, on the country's acceptance of the Charter of the United Nations and the International Covenants on Human Rights, as well as the CSCE agreements and provisions guaranteeing the rights of ethnic minorities. On 14 January 1992 the Badinter Commission stated that Macedonia had fulfilled all the EC conditions.

249. In order to improve the economic situation international assistance is required; this cannot be obtained unless the Republic of Macedonia is accepted as a member of the United Nations.

250. According to its Constitution, the Republic of Macedonia does not have any territorial claims on neighbouring countries.

251. It is to be recalled that according to the report presented by the CSCE human rights mission conducted in December 1991, the human rights situation, apart from the relationship between the Albanian and Macedonian community, was rather satisfactory. The next CSCE mission, conducted in May 1992, stated that this situation had improved still further.

252. The Republic of Macedonia has adopted a positive attitude regarding international monitoring of the human rights situation in Macedonia. The permanent presence of the CSCE Spillover Monitoring Mission is of great importance. The mission plays a very significant preventive role. At present it is composed of eight members from seven countries. The announced enlargement of the Mission by three EC observers is welcomed.

253. The Special Rapporteur endorses the deployment of a UNPROFOR contingent in Macedonia. The presence of UNPROFOR should help to maintain border security and is perceived as a preventive measure.

254. The Special Rapporteur during his mission to the Republic of Macedonia managed to obtain first-hand information allowing him to express his conviction that the Government of the Republic of Macedonia is pursuing a policy aimed at the realization of internationally recognized human rights standards. Full implementation of these standards has not yet been achieved, due to various factors. The further improvement of the human rights situation in Macedonia will not be possible without international assistance. On the contrary, lack of international recognition may contribute to the disintegration of the State and may cause inter-ethnic disturbances which may lead to a military conflict with far-reaching consequences for the whole region.

255. For that reason the Special Rapporteur strongly believes that the admission of the Republic of Macedonia to the United Nations will contribute to the protection of human rights in that country. It will enable that country, inter alia, to ratify international human rights instruments and to take full advantage of existing universal and regional human rights protection mechanisms.

VII. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

256. Ethnic cleansing violates fundamental principles of international human rights and humanitarian law. Reference should be made to the principles embodied in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and international humanitarian law, including the Geneva Conventions of 12 August 1949 for the protection of war victims and the Additional Protocols thereto.

257. With particular regard to Bosnia and Herzegovina, practices associated with ethnic cleansing are in violation of the specific commitments undertaken by all parties to the conflict. On 22 May 1992, the parties signed an agreement in Geneva reaffirming their obligation to respect fundamental principles of international humanitarian law. On 27 August 1992, in London, the parties signed a Programme of Action on Humanitarian Issues (see annex III). This Programme of Action has remained a dead letter.

258. The leaders of all parties generally exercise effective control over their civilian and military structures and cannot thus dissociate themselves from atrocities committed by their forces.

259. Evidence of war crimes during the conflicts in both Croatia and in Bosnia and Herzegovina is mounting. Numerous cases of summary executions and death threats, disappearances, torture and ill-treatment of detainees and destruction of property including religious sites, have been documented.

260. Rape of women, including minors, has been widespread in both conflicts. There are victims among all ethnic groups and there are rapists among the armed forces of all parties to the conflicts. In addition, rape has been deliberately used as an instrument of ethnic cleansing and most of the rapes documented have been committed by Serb forces against Muslim women in Bosnia and Herzegovina. The Special Rapporteur is not aware of any attempts by any of those in positions of power, either military or political, to stop the rapes (see annex II).

261. The political and military leaders of the Bosnian Serbs bear the primary responsibility for the ethnic cleansing policy carried out there in total disregard of their obligations. However, with the prolongation of the conflict more and more atrocities are being committed by the other parties.

262. To date, international action and an international presence have clearly failed to prevent ethnic cleansing from taking place. Official figures for Bosnia and Herzegovina show that the number of refugees and displaced persons in the second half of 1992 was much greater than in the early stages of the conflict there. However, the deployment of UNPROFOR as well as

representatives of the ICRC, UNHCR and envoys of charitable organizations has partly alleviated the consequences of the military conflicts in the former Yugoslavia. The Special Rapporteur wishes to express his appreciation of the courage and devotion of the officers and soldiers of UNPROFOR, UNHCR personnel, ICRC delegates and the many other organizations which provide humanitarian relief.

263. In Bosnia and Herzegovina, thousands of persons, mainly civilians, are still imprisoned in spite of commitments to free them made by leaders of all parties to the conflict. There is strong reason to believe that no party has fully notified the ICRC of its detention camps and detainees. The practice whereby people are confined to live in designated villages renders those villages de facto detention centres where people are kept as potential hostages or "bargaining chips" in exchanges of prisoners.

264. Dramatic conditions exist in besieged cities and regions. Convoys attempting to deliver humanitarian aid are attacked again and again.

265. The hostilities in Bosnia and Herzegovina as well as in Croatia are increasingly influencing the human rights situation in the whole region. There is a danger that military conflict will spread to other territories, in particular to Kosovo.

266. The influence of ultranationalistic ideologies is growing in Serbia and in other countries of the former Yugoslavia. Indoctrination and misinformation continue to encourage national and religious hatred.

267. Coordination of human rights activities must be enhanced. The Special Rapporteur acknowledges with appreciation the work undertaken by international and local actors in the field but he must emphasize that the present level of coordination leaves a great deal to be desired. Efficient monitoring and investigation of the human rights situation are far from being achieved.

268. In his first report, presented at the end of August (E/CN.4/1992/S-1/9), the Special Rapporteur recommended "the appointment of staff in the territory of the former Yugoslavia". That recommendation has been supported by the subsequent resolutions of the Commission on Human Rights and the General Assembly. Nevertheless, it has not been implemented. The effective fulfilment of the Special Rapporteur's mandate requires that all sectors of the United Nations Secretariat extend their full cooperation and assistance to him. At present, the material and human resources available to the Centre for Human Rights for this task are inadequate, both in Geneva and in the field.

B. Recommendations

269. The following are the recommendations of the Special Rapporteur:

1. Almost all the recommendations formulated in the Special Rapporteur's three previous reports are still relevant and have yet to be implemented. The Special Rapporteur reiterates the following key recommendations:

(a) All detainees should immediately be released into conditions of safety. Those accused of war crimes should have a fair trial with the presence of impartial international monitors;

(b) Security zones should be created in Bosnia and Herzegovina;

(c) Blockades of cities and regions should be ended immediately and humanitarian relief corridors opened;

(d) All victims of rape, whether or not they are refugees, should have access to the necessary medical and psychological care. Such assistance should be provided within the framework of programmes to rehabilitate women and children traumatized by war. Regarding the social reintegration of child victims of the war, United Nations bodies, non-governmental organizations and local communities should combine their efforts in support of the family;

(e) UNPROFOR should have the right to intervene in cases of human rights violations. They should also be mandated to investigate complaints concerning such violations and closely cooperate with the Special Rapporteur in this regard. The necessary increase in their civilian staff and resources should be arranged to provide for this extension of their mandate;

(f) The Special Rapporteur supports the negotiations being undertaken by UNHCR with the Government of Croatia and recommends that a formula be found that would allow refugees to cross the border for at least temporary protection or in transit to third States. The right to seek asylum must be guaranteed. The Special Rapporteur emphasizes that more international aid to refugees is essential as well as more generous burden-sharing by the international community in the acceptance of refugees;

(g) In most parts of the former Yugoslavia, there is a need for support and assistance to be provided to democratically oriented groups. The information blockade which prevails in the region should be broken. Support should be given to initiatives taken by independent groups, both within and outside the former Yugoslavia, which aim to provide objective information.

2. The credibility of the parties to the conflicts should be measured by their proven commitment to respecting human rights. In the light of the present situation in Bosnia and Herzegovina, such a test requires the following:

(a) All necessary measures should be taken immediately to release all detainees, establish security zones in Bosnia and Herzegovina as well as lift blockades and open humanitarian relief corridors;

(b) Human rights concerns must be given priority in the peace process. All negotiations must take full account of the compliance of the parties with their previous human rights commitments.

3. All victims of ethnic cleansing should be guaranteed an effective right of return. In order for this to be a feasible prospect for those driven from their homes by terror or forcibly displaced, certain preconditions must be fulfilled: effective international monitoring to verify compliance with

international human rights obligations is indispensable; property must either be restored to its owners or adequate compensation paid, and forced transfers of property must be recognized as null and void; furthermore, economic and social aid from the international community is essential to assist the reconstruction of destroyed villages and towns. In this context, the creation of an international voluntary fund should be considered.

4. The creation of an international war crimes tribunal should be further investigated. The Special Rapporteur insists, once again, on individual responsibility for human rights and humanitarian law violations.

5. Coordination of human rights activities must be improved.

6. The necessary means for the Special Rapporteur to carry out his mandate effectively must be provided by the United Nations. In this regard, the Centre for Human Rights must be given all required resources.

Note

1/ According to the Constitution of the Federal Republic of Yugoslavia of 1974, there were in Yugoslavia five "constituent nations": Serbs, Croats, Muslims, Slovenes and Macedonians. All others were considered as national minorities and referred to as "nationalities".

Annex I

SUMMARY OF THE REPORT OF THE SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS ON HIS MISSION TO INVESTIGATE ALLEGATIONS OF MASS GRAVES FROM 15 TO 20 DECEMBER 1992

1. At the request of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia, Mr. Bacre Waly Ndiaye, the Special Rapporteur on extrajudicial, summary or arbitrary executions, visited Croatia from 15 to 20 December 1992 to carry out preliminary investigations into allegations received indicating that victims of war crimes may be buried in various mass graves in the former Yugoslavia, particularly Croatia. In the initial investigation and assessment of the sites visited during his mission, the Special Rapporteur was assisted by a member of the team of forensic experts examining the site at Ovcara on behalf of the Commission of Experts established pursuant to Security Council Resolution 780 (1992).

2. An agreement was reached between the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia and the Chairman of the Commission of Experts established pursuant to Security Council resolution 780 (1992) to the effect that cases where there is prima facie evidence of a mass grave containing the remains of victims of war crimes would be forwarded to the latter for in-depth investigations.

3. The reports received concerned allegations of mass graves situated in Croatia, the majority within United Nations Protected Areas (UNPAs) in Sectors East and West. Given the sensitivity of the issue and the possible repercussions of investigations into allegations of mass graves for the safety and work of UNPROFOR personnel in the areas concerned, Mr. Ndiaye sought, and received, comprehensive briefings by UNPROFOR about the situation prevailing in both UNPAs. While UNPROFOR in Sector West reported that working relationships with both Croatian and Serbian authorities in the Sector were good, the situation in Sector East was described as very difficult. The hostile attitude of the local authorities of the self-proclaimed "Serbian Republic of Krajina" (RSK) towards UNPROFOR was reported to be the main problem. The security situation in the Sector was portrayed as precarious.

4. During his visit to three different sites in Sector East a few days later (see below), Mr. Ndiaye personally experienced the above-described hostility, when his team was stopped twice by RSK militia. On the first occasion, the militia contented themselves with explaining to the accompanying CIVPOL officers that authorization from the local police station had to be requested before visiting the site. In the second incident, five members of the militia approached the team near the alleged mass grave. Two of them carried loaded AK-47 machine guns. They shouted at the CIVPOL members, slapping away in a gesture of contempt the UNPROFOR badges presented to them. The reverse side of the badge bears the statement that UNPROFOR personnel are entitled to freedom of movement. The militia calmed down only when the team decided to leave the site.

5. In carrying out his investigation, Mr. Ndiaye proceeded first to study all the information regarding mass graves contained in UNPROFOR files to

complement the allegations that had been received. As a second step, he decided which sites might warrant further investigation, namely an on-site visit to determine their exact location and to find, with the help of a forensic expert, possible traces (e.g. signs on the ground, bones, teeth, pieces of clothing, personal objects, etc.). For the purpose of his mission, Mr. Ndiaye defined "mass graves" as locations where three or more victims of extrajudicial, summary or arbitrary executions were buried, not having died in combat or armed confrontations.

6. After studying the files, Mr. Ndiaye decided not to undertake on-site visits to three locations, where the allegations made were not sufficiently substantiated. He identified four other places which could not be visited during his mission but which could be looked into at a later date. Two of these possible mass graves are situated in UNPA Sector East, one in UNPA Sector West and one in Croatia, in close vicinity to UNPA Sector East. With regard to the site in Sector West, Mr. Ndiaye was informed that the local authorities had already initiated an investigation. It was requested that these files be forwarded to the Special Rapporteur.

7. Four sites were actually visited by Mr. Ndiaye and one forensic expert. The findings at the sites largely corresponded to the allegations and were consistent with possible mass graves. In one case, however, the information gathered in the field as well as the testimony of two witnesses which Mr. Ndiaye was able to obtain seemed to exclude the possibility that those buried there had been victims of war crimes. The unstable security situation may prevent a more thorough investigation of two other sites; the safety of possible witnesses, of forensic experts working at the site, of security guards as well as of the site itself cannot be guaranteed under the present circumstances.

8. The fourth location said to be a mass grave was qualified by the forensic expert as "highly suspicious". He recommended a preliminary forensic investigation of the site and that the site be secured to protect evidence and to prevent, for example, the removal of such bodies as might be present. In keeping with the agreement regarding the investigation of possible mass graves, Mr. Ndiaye considered recommending that the dossier concerning this fourth site be passed on to the Commission of Experts established pursuant to Security Council resolution 780 (1992). He felt, however, that before doing so, a number of practical, legal and political considerations needed to be addressed.

9. As concerns the practical aspects, Mr. Ndiaye outlined a number of minimum conditions that must prevail before further investigations into alleged mass graves are undertaken. The exploration and excavation of sites as well as the exhumation and examination of bodies requires specialists working on a full-time basis for a considerable period of time. Facilities are needed for the examination and conservation of human remains as well as office space, accommodation, transport, etc. Funds for the remuneration of the experts and to cover all other costs must be made available. Mass graves containing victims of war crimes must be regarded as the scene of a crime and therefore treated as such. From the very first visit to a grave until the end of the investigation, the site must be protected so as to preserve the evidence. The personal security of the specialists working at the site must

be guaranteed. A number of the sites suspected to be mass graves are located in areas that are considered war zones, while those guilty of war crimes may still be present. These factors may generate serious security problems for those involved in the investigation.

10. A number of legal questions related to the investigation of mass graves for the purpose of obtaining evidence in war crimes proceedings would also have to be solved in advance. These include the following: Which body should conduct proceedings against persons accused of war crimes in the former Yugoslavia? Should it be national courts or an international "war crimes tribunal"? Which would be the legal grounds for its jurisdiction? Who should be the judges in such proceedings and by whom should they be appointed? What rules of procedure should be followed, and on what legal grounds should they be based? How should decisions taken by such bodies be implemented? To what extent would national laws regulating the excavation of mass graves and exhumation of remains have to be taken into account? What is the appropriate attitude towards local authorities not recognized by the United Nations but in de facto control of the areas in which mass graves are located and towards their "legislation"?

11. Of paramount importance is the need for impartiality. War crimes have been and continue to be committed by all sides. All war crimes should be investigated regardless of the identity of the alleged author or of the victims. A political decision must also be taken with regard to the extent of collaboration of the Governments in such investigations. Another question of principle concerns the mandate of UNPROFOR with regard to allegations of mass graves in particular, and war crimes in general. At present, UNPROFOR is mandated only to monitor investigations undertaken by the local authorities.

12. In his report, Mr. Ndiaye emphasized the particularly sensitive nature of the problem of mass graves and suggested a "code of conduct" that should apply to all persons involved in the investigation of this issue. This code should, in particular, provide guidelines for contacts with the press and other media to avoid the counterproductive effects of unwanted publicity.

13. Mr. Ndiaye stressed the seriousness of the reports of mass graves holding victims of war crimes. He underlined the importance of identifying the victims; this would end a long period of uncertainty for relatives of many disappeared persons. However, international action against the authors of such war crimes can only constitute an effective deterrent if it is legally well founded, politically feasible and practically possible. He suggested that, although such proceedings are important, in the present circumstances all efforts and resources should be concentrated on trying to halt the massacres in Bosnia and Herzegovina and to protect lives threatened in other regions of the former Yugoslavia such as Kosovo.

14. Once the war has come to an end, the circumstances for the investigation of mass graves will, in all probability, be much more favourable. Forensic experts will still be able to obtain evidence from the remains of those buried in these graves in many years' time. Mr. Ndiaye concluded his report with some practical suggestions which may facilitate such investigations of mass

graves related to possible war crimes in the future. These include systematic gathering of information, ideally through human rights monitors in the field. In parallel to their work, all testimony collected by UNPROFOR should be recorded in the form of a procès verbal, that is, a precise transcription. All witnesses should be registered and up-to-date information kept as to their whereabouts, so that they may be contacted if, at a later date, judicial proceedings are initiated. If necessary, these witnesses would have to be protected. All information regarding alleged war crimes should be collected and kept on record for possible use in any further trials.

Annex II

REPORT OF THE TEAM OF EXPERTS ON THEIR MISSION TO INVESTIGATE ALLEGATIONS OF RAPE IN THE TERRITORY OF THE FORMER YUGOSLAVIA FROM 12 TO 23 JANUARY 1991

I. INTRODUCTION

1. Pursuant to Commission on Human Rights resolutions 1992/S-1/1 and 1992/S-2/1, the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia requested a team of medical experts to investigate reports concerning the widespread occurrence of rape and, in particular, allegations received that rape was being used in a "systematic" way, especially in Bosnia and Herzegovina.

2. The team was composed of the following four experts: Dr. Greta Forster (genito-urinary specialist, United Kingdom), Dr. Perran Möröy (obstetrician/gynaecologist, Turkey), Dr. Elizabeth Murphy (psychiatrist, United States of America) and Dr. Shana Swiss (women's health and human rights, United States of America). Mrs. Chafika Meslem, Director of the United Nations Division for the Advancement of Women, accompanied the team during the mission which was carried out from 12 to 23 January 1993. The team spent four days in Croatia (Zagreb and surrounding areas, including Karlovac). Half of the team then went to the Federal Republic of Yugoslavia (Belgrade and surrounding areas, including Loznica) and the other half spent two more days in Zagreb and four days in Bosnia and Herzegovina (Sarajevo and Zenica). The report was finalized over a three-day period in Geneva.

3. The purpose of the mission was to investigate allegations of the widespread use of rape, that is, non-consenting sexual relations with another person obtained through physical force, threat or intimidation, 1/ in the territory of the former Yugoslavia.

II. INFORMATION/EVIDENCE OBTAINED

4. In carrying out the mandate entrusted to them, the team of experts applied a variety of methods to obtain evidence, as detailed below.

A. General information

5. General information regarding the subject was obtained in meetings with representatives of the Governments concerned, international organizations with representation in the locations that were visited, non-governmental organizations concerned with women's issues, local women's groups, religious leaders of Muslim communities, and other sources including UNPROFOR officials, relatives of detained or disappeared persons as well as relatives of victims of rape.

6. According to some of these sources, rape has been used since the beginning of the conflict on a large scale, as a means of implementing the strategy of ethnic cleansing and to increase inter-ethnic hatred. Paramilitary groups are said to be responsible in most cases. The victims are said to be mainly Muslim but also Serb and Croat women. Most reports relate

to the months of May and June 1992. Attempts made to locate specific places where women were allegedly detained and raped have proved unsuccessful to date. Information provided was often too imprecise. In several cases, alleged rape camps were found to be empty when visited by ICRC delegates.

B. Statistical data

7. Statistical data including rates of birth, abortions, sexually transmitted diseases (STD) including HIV infection, as well as the numbers of pregnancies reportedly due to rape were requested from the hospitals visited in Zagreb, Sarajevo, Zenica and Belgrade.

8. A number of pregnancies resulting from rape were documented among women who received abortions or pre-natal care at several hospitals. The women were known to be victims of rape through disclosure to their physician or, after denial of abortion, through the appeals procedure before ethics committees. Some were so distressed that they received a psychiatric consultation during which they admitted to having been raped.

1. Known pregnancies resulting from rape in 1992

9. Through interviews with physicians and a review of medical records from six major medical centres in Zagreb, Sarajevo, Zenica and Belgrade, the team of experts was able to identify 119 pregnancies resulting from rape during 1992.

Croatia

10. In one major hospital in Zagreb, 28 pregnant women refugees from Bosnia and Herzegovina (6 from Prijedor, one of them 15-years-old) personally stated that they had been raped; 25 of them were admitted to the hospital for early abortions. 2/ One late abortion was performed. Two victims delivered babies. In the second hospital visited by the team of experts in Zagreb, there were seven known pregnancies resulting from rape. Two women delivered babies; four are expected to give birth in early 1993, one had had an abortion (term unknown).

Bosnia and Herzegovina

11. In Zagreb, medical information was obtained regarding a hospital in Tuzla, where, in 1992, 45 pregnancies were known to have resulted from rape. In 41 cases, abortions were performed up to 20 weeks of pregnancy. Four women were more than 20 weeks pregnant due to rape and did not receive abortions.

12. In the largest gynaecological clinic in Sarajevo, the number of known pregnancies due to rape in 1992 was 15; 14 of these were terminated through late abortions, while one resulted in delivery.

13. At the gynaecology clinic in Zenica, 19 pregnancies were known to be the result of rapes; 16 women, all between 17 and 22 years old, were seen at the clinic in October and November 1992. All were more than 20 weeks pregnant as a result of rape and could not receive abortions. Abortions were performed on three other women who had been raped in front of their parents and had come to

Zenica in early pregnancy. Most of these women came from villages occupied by ethnic Serbs such as Vogosca, Hanpijesak, Foca, Rogatica, Banja Luka and Kotor Varos.

Federal Republic of Yugoslavia

14. At one specialist maternity hospital in Belgrade, there were five recorded cases of pregnancy due to rape. Medical records were obtained regarding these cases, which included three late terminations of pregnancy and two deliveries (see details below).

2. General abortion and delivery data

Croatia

15. According to data obtained in one of the two major hospitals visited in Zagreb, 6,521 infants were delivered and 4,615 abortions performed in 1992. In the second hospital, 4,039 infants were delivered and 4,100 abortions performed in 1992 (as compared to 3,103 deliveries and 3,000 abortions in 1991). In both hospitals, the total number of abortions and deliveries increased in 1992. However, the ratio of abortions to deliveries remained approximately the same as in 1991, according to the physicians in charge of both hospitals' gynaecology departments.

Bosnia and Herzegovina

16. In 1992, the number of abortions performed at the clinic visited by the team of experts in Sarajevo had doubled in September, October and November (400-500/month) compared to pre-war rates (approximately 200/month). 3/ At the same time, the number of patient visits decreased by half. This means that there were effectively four times the number of abortions in those months compared to pre-war rates. Doctors noted an increase in late terminations of pregnancy beginning in September 1992.

17. Spontaneous abortions (miscarriages) also increased in Sarajevo. This was thought to be due both to lack of availability of food as well as to psychological trauma. 4/

18. Abortions were performed at three health centres and several emergency centres in Sarajevo. However, some of these centres have been destroyed, along with all of their medical records.

19. In the clinic visited in Zenica, 1,489 early abortions were performed in 1991, 2,106 in 1992. There were 632 abortions performed in the first half of 1992 and more than twice as many abortions in the second half of the year, 1,474, with 712 abortions performed in December 1992.

20. In Zenica, there were 4,300 deliveries in 1991. In 1992, there were 3,900 deliveries. In the former Yugoslavia women historically deliver in hospitals, and Zenica is a referral hospital for a large area in Bosnia and Herzegovina that includes 2.5 million people, from Doboj and Knojic to Bugojno

and Kupres. Zenica, which had a population of approximately 145,000 people according to the 1991 census, has received an influx of 230,000 refugees since the war began.

Federal Republic of Yugoslavia

21. Despite a decline in live births, numbers of early and late abortions remained relatively stable from 1984 to 1992 at one of two specialist maternity hospitals in Belgrade. The ratio of abortions to deliveries ranged between 0.5 and 0.7 between 1984 and 1992. A total of 4,200 early, and 438 late abortions were performed at this hospital in 1992. During the same year, 238 applications for late abortions were received by the Appeals Commission for the entire city.

C. Analysis of statistical data and medical records

1. Under-reporting

22. Rape is among the most under-reported crimes in peacetime throughout the world. Because of the stigma attached to rape, shame and secrecy often silence the victims. According to many physicians and psychologists whom the team of experts met in the former Yugoslavia, even in peacetime women rarely disclosed that they had been raped, whether Croatian, Muslim or Serbian. This was so even though early abortions were readily available and accessible. This clinical observation is supported by the very low rate of charges brought for rape or attempted rape in the former Yugoslavia. 5/

23. Rape continues to be under-reported during wartime. Women who are raped by soldiers see it as useless to press charges or demand justice. "There is no one to complain to," one woman who had been raped by a soldier told a member of the team of experts. Soldiers who have licence to rape because of their military association is a form of institutionalized violence that leaves victims with little recourse. Rape by soldiers is increasingly used as a weapon of war against women and girls.

24. Many women will not talk about their experience of rape for fear of reprisals. Many women interviewed by the team of experts personally knew, or knew the names of, the men who had raped them. Some were reluctant to tell the experts the names of the perpetrators because of fear for their own and their family's safety.

2. Data collection

25. Clinical care of victims takes precedence over data collection in times of war. The team encountered difficulties in its ability to collect data. These include limitations on the number of hospitals that could be visited, unanticipated inaccessibility of certain locations for security reasons, destruction of data during conflict, and the need for collecting data from individual hospitals rather than any central reporting agency.

3. Evaluation of findings

26. The team of experts collected data on pregnancy rates, birth rates, abortion rates, STD including HIV infection as well as the number of pregnancies reportedly due to rape. The experts were looking for data that might indicate large-scale sexual abuse of women.

27. In Zagreb and Belgrade, cities not directly involved in the hostilities but which have accepted large refugee populations, the ratio of abortions to deliveries has remained relatively stable since the conflict began compared with other areas directly affected. In the city of Zenica, for example, the number of all pregnancies ending in abortion increased in December 1992. In Sarajevo, abortions doubled while the number of patient visits decreased by half in the last four months of 1992. While this increase could reflect a rise in pregnancies due to rape, it could also reflect a more general response to economic and social instability created by war.

28. Through interviews with physicians and a review of medical records from six major medical centres serving large refugee and Bosnian populations, the team of experts was able to identify 119 pregnancies resulting from rape during 1992. The vast majority of these were specifically identified by the physicians or the victims as being the result of rape by paramilitary soldiers. The women were known to have been victims of rape through their disclosure to their physicians or in justifying a request for a second trimester abortion. For some women, the history of rape was elicited during psychiatric consultation for severe distress.

29. Virtually all interviewed physicians and health workers felt that the reporting of rape resulting in pregnancy would be far lower than its actual occurrence due to the profound emotional pain and stigma associated with rape. Indeed, it had become express policy for some medical personnel not to inquire of women requesting abortions whether they had been raped. The 119 cases documented to have been associated with rape, therefore, should be viewed as the minimum number of pregnancies due to rape in the populations served by the hospitals visited.

30. It is not possible to know precisely the actual number of rapes or the number of pregnancies due to rape that have occurred. However, estimates can be made based on the 119 documented cases of pregnancy resulting from rape. Medical studies suggest that of every 100 incidents of rape, one will result in pregnancy. 6/ This suggests that the 119 documented cases were likely to have been the result of approximately 12,000 incidents of rape. Since it is clear that women experienced multiple and/or repeated rape, this figure should not be construed as a direct indication of the number of women who were raped in the populations using the medical facilities visited by the team of experts but may only serve as a guide to the general scale of the problem. 7/

31. Nevertheless, because the under-reporting of rape is so profound and the source of documented cases was only six hospitals, the 119 documented cases suggest that the incidence of rape in the conflict in the former Yugoslavia has been widespread.

D. Testimonies

1. First-hand testimonies

32. Interviews were conducted with victims of and eye-witnesses to rape. These interviews took place in hospitals and refugee camps in and around Zagreb, Sarajevo, Zenica, Belgrade and Loznica. Interviewees were selected through contacts with relevant physicians and by random sampling in refugee camps.

33. Though the interviews with victims and eye-witnesses provided essential information, the team of experts decided to present these testimonies in summarized form to preserve confidentiality and protect the safety of the women interviewed, as well as that of their families. Complete documentation concerning the interviews conducted by the experts is in the possession of the United Nations Centre for Human Rights.

Testimonies obtained by the team of experts in the Federal Republic of Yugoslavia

34. Of 35 ethnic Serb refugees (11 males, 24 females) from Bosnia and Herzegovina as well as Croatia who were interviewed by the team in different locations in the Federal Republic of Yugoslavia, five women reported multiple rapes. In five other cases, the experts strongly suspected that the women had been raped. The following are extracts from some of the testimonies received.

35. One Serb woman reported that after the conflict had reached her village, all ex-neighbours wore uniforms of the Croatian army. She reported being taken, together with other women and children, to Novi Grad (north-east Bosnia and Herzegovina) where they were confined to private houses and many of the women were raped. She told the experts that she knew a lot of them. "Some helped, but some did things that could not be forgotten. I had to pay for everything with myself."

36. One elderly Serb woman, who the experts suspected was raped herself, reported witnessing the repeated rape of numerous women in a detention camp controlled by Muslim forces. Guards would come at night to the room where women and girls were sleeping and select them using a flashlight. She told the experts that she would "prefer to jump into the river Drina than to go through it again." Two other Serb women reported abuses of close female relatives who were detained and subjected to threats of rape, but did not admit to being raped themselves.

37. Two men who were detained witnessed women being raped repeatedly. In one Croat-run military detention centre near Split, women of all ages were kept in a separate building, apart from the male prisoners. They were taken out at night and raped.

38. Most of the rapes reported by ethnic Serb refugees occurred in Bosnia and Herzegovina, while others took place in Croatia. A number of these rapes reportedly took place in detention camps, where ethnic Serb women reported having been held and repeatedly raped by Croat or Muslim forces. Those said to be the perpetrators were Croat soldiers and police as well as ethnic Croat

and Muslim forces. Eight of those who had either experienced or witnessed rape had been interviewed by one or more journalists and missions investigating human rights violations. One woman who had given numerous interviews complained that she had not yet received a gynaecological examination, despite having symptoms, since being raped. She expressed anger and felt manipulated and used.

Testimonies obtained by the team of experts in Croatia and in Bosnia and Herzegovina

39. A total of 16 women were interviewed in Croatia and Bosnia and Herzegovina. Three of them were ethnic Croats and 13 of them were Muslims. Physicians helped locate many of these women, which may explain why there was a large number of women who had become pregnant as a result of rape among those interviewed by the experts.

40. Six Muslim and two ethnic Croat women reported having been raped. One 43-year-old Muslim woman reported being repeatedly raped in her apartment in a Serb-occupied area for seven months until she managed to escape. The perpetrators, who came to the apartment regularly two or three times a week, were two ethnic Serbian neighbours in paramilitary uniforms. Another Muslim woman reported how some of the ethnic Serbs in her village rounded up the Muslims and took them to a primary school where she was detained with 12 other women and about 400 men. "The soldiers would come every evening around midnight, drunk and dirty. This went on for about two months. Some of them were my neighbours, and some of them I did not know, from Serbia. There was a room with five or six men in it. They would all rape one woman and then take her away and bring in another woman. All 13 of us were taken there; the youngest girl was ten years old."

41. One ethnic Croat woman was detained in a Serb-controlled camp with 34 other women and a large number of men. She reported that all 34 women in the camp were raped: "There were so many killings, torture. Death became very familiar. All of the women were begging to be killed, to be shot, not to be tortured ...". Another ethnic Croat woman was detained in a "special house" where she was raped by several men every night for approximately two months. Every night she could hear screams and cries of other women. She reported that, while raping her, the men were shouting: "you will have a Serbian child". She also reported being told that, if she were pregnant, she would be "forced to stay there until six months of pregnancy".

42. Two other women reported having witnessed rapes: one ethnic Croat woman reported being detained for two months in a camp where she witnessed three Muslim women being repeatedly beaten and tortured. One older Muslim woman reported that two 12-year-old girls had been raped.

43. All of the above-described rapes of Croatian and Muslim women occurred in Bosnia and Herzegovina between May and December 1992, near Prijedor, Banja Luka, Kljuc, Mahale and Sarajevo. In all cases, the perpetrators were said to be local ethnic Serb paramilitary or paramilitary from Serbia. Two women personally knew the men who raped them. Five were pregnant as a result of rape. Two had given birth to children. One child has been adopted and the other has been rejected by the mother and is being kept in the hospital.

Three women have had abortions. Two of the women had been interviewed by journalists investigating human rights violations. One of these, because of coming forward in public, was verbally attacked by another refugee woman. "Maybe it would have been better if I hadn't spoken about it," she told the team of experts.

2. Other testimonies and reports

44. In addition to direct interviews, the team of experts carefully examined testimonies of victims and/or witnesses of rape obtained by physicians, government representatives and independent agencies. Information regarding a number of clinical cases was also obtained through the study of medical records in these hospitals.

45. The experts reviewed five medical records, obtained at a major maternity hospital in Belgrade. These medical cases, which included, where appropriate, birth records or official approvals for abortions, concerned five Serb refugee women from Bosnia and Herzegovina, between 20 and 38 years of age, pregnant as a result of multiple rape over periods of three weeks to five and a half months by Muslim and Croat irregular soldiers. Four of the five women had been denied abortions elsewhere on one or more occasions. Three obtained late abortions at 20 to 23 weeks' gestation. All women exhibited psychological trauma and three required psychiatric interventions. Given allegations that HIV-antibody positive men were deliberately raping Serb women, all five women were tested but proved HIV-antibody negative. The five women were not available for interviews with the experts. Three had moved from the area. Two had made themselves inaccessible, due to a desire for anonymity after extensive interviews and media exposure.

46. The team also received three reports prepared by governmental agencies of the Federal Republic of Yugoslavia, which documented multiple rapes carried out by Croat and Muslim soldiers against Serbian women, formerly resident in Bosnia and Herzegovina and Croatia, during the conflict. For the purpose of this mission, the only governmental reports used were those substantiated by evidence collected by the team of experts.

47. The team of experts received more than 30 reports prepared by governmental and non-governmental organizations in Croatia and Bosnia and Herzegovina. All of these reports documented victims of or eye-witnesses' accounts of rapes or multiple rapes of Croat and Muslim women. The team also reviewed 16 interviews conducted by physicians with victims of and eye-witnesses to rape in Croatia and Bosnia and Herzegovina. While the team relied primarily on the information that was gathered from interviews with victims and eye-witnesses and from interviews with physicians and medical data collected, the experts found these reports useful in understanding the scope of the problem.

48. From a review of the information contained in the documents and testimonies received, as well as from meetings held by the team of experts with some of these physicians, several patterns became apparent. Although the team interviewed a small number of women, the information acquired from these personal interviews was consistent with some of the information found in these additional testimonies and reports.

(a) Rape has been used as one method to terrorize civilian populations in villages and forcing ethnic groups to leave. One example of this was described by a physician who interviewed several women from the region of Vukovar (Croatia). There, Serb paramilitary units would enter a village. Several women would be raped in the presence of others so that word spread throughout the village and a climate of fear was created. Several days later, Yugoslav Popular Army (JNA) officers would arrive at the village offering permission to the non-Serb population to leave the village. Those male villagers who had wanted to stay then decided to leave with their women and children in order to protect them from being raped;

(b) In one pattern that was reported in several Serb-controlled areas, particularly in Bosnia and Herzegovina, local Serb forces in conjunction with Serb forces from outside the area would occupy a village and restrict the movement of the local population. Often, men were deported or fled. Women were then often raped in their own homes or taken from their homes to another location and raped, often by neighbours or people known to them. Reports of similar abuses were obtained from a Serb refugee who came from north-eastern Bosnia and Herzegovina, regarding a number of villages occupied by Croat forces, particularly in the region of Novi Grad;

(c) Although the team of experts heard stories about individuals, Croats, Muslims and Serbs, who risked their own safety to try and help their threatened neighbours, they heard of no attempts made by anyone in a position of authority to try and stop the raping of women and girls. In fact, some of those in power actively participated in it. One example for this was given by a Muslim woman living in a Serb-occupied town. She reported being taken by an ethnic Serb policeman to a private home where she was presented with the words: "Here she is, Commander. I brought her!" She recognized the "Commander" as one of the strongest political figures in the region before the war. He told her to go into his office, which was his bedroom, where he raped her. Serb women also reported that women were raped by Croat and Muslim policemen and men in positions of authority;

(d) Rape was also commonplace in detention camps on all sides. There, women were kept together in rooms in a separate part of the camp. Women were taken individually to other rooms, where they would be repeatedly raped.

III. OBSERVATIONS, CONCLUSIONS, RECOMMENDATIONS

A. Observations

49. Rape is an abuse of power and control in which the rapist seeks to humiliate, shame, embarrass, degrade and terrify the victim. The primary objective is to exercise power and control over another person.

50. Rape of females has encompassed the entire age spectrum, from children to elderly women, in all areas of the conflict.

51. Many women are reluctant to speak about their experiences for a variety of reasons: because of severe traumatization, feelings of shame, lack of

trust, fear of awakening bad memories. Fear of reprisals against themselves and their families, some of whom may still be in the areas affected by the conflict, also makes victims unwilling to speak.

52. Repeated interviewing of victims by a number of missions and some media representatives has further decreased their readiness to testify. Some of the women met by the team of experts felt exploited by the media and the many missions "studying" rape in the former Yugoslavia. Furthermore, health care providers were concerned about the effects on women of repeatedly recounting their experiences without adequate psychological and social support systems in place.

53. Some governmental and non-governmental organizations in the former Yugoslavia are exploiting the issue of rape for their own political aims.

54. Women are not being provided with the necessary gynaecological and STD screening that should be part of their overall care following rape. In some circumstances, this is due to lack of reporting of the abuse, sometimes caused by inability to disclose the experience of rape to others. However, the geographical locations of some refugee centres limit access to appropriate health care, as do economic and logistic constraints.

55. Establishing health services that are designed specifically for rape victims will lead to further stigmatization. Therefore, programmes should be created for all women and children who have been traumatized by war. These considerations should be taken into account by the international community when awarding aid for specific programmes.

56. The experts were informed that 65-70 per cent of refugees in Croatia are in private homes, while 96 per cent of refugees in Belgrade are in private homes. Economic aid for those housing refugees in their own homes is needed.

57. The team of experts has observed that children have been and are continuing to be exposed to war trauma directly, as well as through the media and through listening to parents' and other adults' graphic discussions of traumatic events, including rape, in their presence.

58. Women's experience of rape can be intensified by cultural and religious views which often blame the victim. Modifying societal beliefs through community education may be helpful in ensuring that victims of rape can participate fully in family and community life.

B. Conclusions

59. Rape of women including minors has occurred on a large scale. While the team of experts has found victims among all ethnic groups involved in the conflict, the majority of the rapes that they have documented had been committed by Serb forces against Muslim women from Bosnia and Herzegovina.

60. The team of experts is not aware of any attempts by those in positions of power, either military or political, to stop the rapes.

61. There is clear evidence that Croat, Muslim and Serb women have been detained for extended periods of time and repeatedly raped.

62. In Bosnia and Herzegovina and in Croatia, rape has been used as an instrument of ethnic cleansing.

63. In these circumstances, rape is a war crime according to the Geneva Conventions of 1949 and the Additional Protocols of 1977 and should be treated as such by the international community.

64. While the media have been helpful in bringing the issue of rape to international attention, some women have been revictimized through repeated interviewing without consideration of the psychological consequences or social support being available to them.

65. More than half a dozen missions to investigate human rights violations against women have visited the former Yugoslavia within the past two months. Lack of coordination has led to duplication of effort and has contributed to "mission fatigue" among victims, care-givers and personnel involved in delivery of services and assistance to refugees.

66. Wide-ranging estimates of numbers of rape victims have recently been publicized. The team of experts was not able to discern a reliable method for the calculation of these figures. While the data collected by this mission support the finding that rape has occurred on a large scale, the team feels that it is not in a position to make an estimate of the total number of rape victims in this conflict.

C. Recommendations

67. Refugee and displaced women, regardless of whether they report having been raped, should be offered basic primary health care including gynaecological and STD screening. Psychological and social rehabilitation must occur at the community level with the input of those who have been traumatized. It should focus on outcomes and not exposures, i.e. on the current problems at hand rather than on the traumatic events that have occurred, including rape. The team of experts would like to recommend non-stigmatizing programmes that focus on healing social damage rather than on rapes. Supporting women's self-help groups within existing community structures may be helpful in this regard. The specific needs of children must also be taken into consideration.

68. For the smaller number of individuals who have serious psychological sequelae, psychiatric services should be available.

69. Training on the effects of chronic violence and trauma should be available to health workers and other relevant service providers.

70. The team of experts wishes to emphasize the importance of international human rights monitoring in the field to collect and analyse first-hand information without delays and to coordinate collection and documentation of data concerning human rights violations in the former Yugoslavia. They should also strengthen and assist local human rights groups to systematize and

coordinate data collection of all human rights abuses including rape. It should be noted that the presence of female human rights monitors would be essential to obtain first-hand evidence with regard to rape. These monitors should receive special training on interviewing women who have been victims of rape. Their work should be coordinated with those providing assistance to women and children.

71. All places where detainees are subjected to human rights violations should be closed and the release of those detained carefully monitored so as to ensure their safety.

72. Those responsible for human rights abuses should be held accountable. In the present situation there is no recourse to justice for victims of human rights violations inside the country. An international tribunal should be established to bring to justice the perpetrators of all war crimes and crimes against humanity, including rape. Those who committed rape, those who ordered it, or those in positions of authority who failed to prevent it should be brought to justice.

73. Victims of rape should be accorded refugee status if the terms of article 1 of the Convention relating to the Status of Refugees are satisfied, namely that a person, "... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country ...".

74. All other pertinent international human rights instruments should also be taken into account, in particular the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the international standards relating to the treatment of detainees, the Convention on the Elimination of All Forms of Discrimination against Women as well as the draft declaration on violence against women.

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75. Rape in this conflict is occurring in the context of complete disregard for the rights of the individual human being. It is only one of a number of unspeakable abuses, cruelties, degradations and losses being visited upon the civilian population in the course of the conflict in the former Yugoslavia. If peace negotiations fail atrocities will continue. The team of experts strongly appeals to those in power to make every effort to stop these violations by all means available to them.

Notes

1/ A.N. Groth, A.W. Burgess, "Rape: A Sexual Deviation" American Journal of Orthopsychiatry (1977:47:400-6).

2/ The working definition of "early abortion" used by the experts for this mission was an abortion carried out up to 12 weeks of pregnancy; "late abortion" was an abortion carried out between 12 and 20 weeks of pregnancy.

3/ These figures reflect information provided by two physicians. Due to difficult working conditions in Sarajevo, the team was not able to examine medical records.

4/ According to one physician, average weight loss in Sarajevo has been 10 kilograms since May 1992.

5/ In 1981, there were 857 charges brought against men between 20 and 69 years old for rape or attempted rape in the Socialist Federal Republic of Yugoslavia (SFRJ), 1,337 charges per 10,000 male inhabitants. In 1988, there were 1,001 criminal charges of rape or attempted rape per 10,000 male inhabitants between 20 and 69 years old, 423 of which resulted in convictions. (Police reports of rape or attempted rape are from the Federal Agency of Statistics, SFRJ.)

6/ W. Cates and C.A. Blackmore, Sexual Assault and Sexually Transmitted Diseases. In: K.K. Holmes et al., (eds) Sexually-transmitted Diseases. (New York: McGraw Hill Book Company, 1984) pp. 119-125.

7/ If the documented cases of pregnancy due to rape represent one quarter of the actual number of rape-associated pregnancies in the populations served by the visited hospitals, and if each pregnant women experienced an average of 20 incidents of rape, then the 119 documented cases would reflect the experience of almost 2,400 women. A figure of 25 per cent was considered to be conservative as reported rape from other European countries reveals rates less than 25 per cent (M. Hough and P. Mayhew. The British Crime Study, Home Office Research Study No. 76 (London: Her Majesty's Stationery Office, 1983)).

Annex III

THE LONDON INTERNATIONAL CONFERENCE: PROGRAMME OF ACTION ON HUMANITARIAN ISSUES AGREED BETWEEN THE CO-CHAIRMEN TO THE CONFERENCE AND THE PARTIES TO THE CONFLICT

Recognising that an effective humanitarian response with the full collaboration of the parties to the conflict would greatly contribute to efforts to find an overall political solution and bring an end to hostilities. The Co-Chairmen of the Conference, the United Nations High Commissioner for Refugees and the parties to the conflict in Bosnia have agreed the following Programme of Action:

1. The parties to the conflict commit themselves to full collaboration in ensuring the delivery of humanitarian relief by road throughout Bosnia-Hercegovina.

2. In order to enhance the development of the system of land convoys to deliver humanitarian assistance on the basis of negotiated safe passage. The following specific steps will be undertaken:

a. Priority will be given to repairing the road and railway between Ploce, Mostar and Sarajevo.

b. The parties to the conflict will no later than 3 September identify to UNHCR representatives at Sarajevo (or at Belgrade, Split or Zagreb as appropriate) designated representatives of the local authorities (at the military police and political level) at all relevant locations with whom the practical arrangements for the expansion of the forthcoming relief missions and road convoys for the benefit for all victims in need will be made.

c. UN and UNHCR representatives will meet regularly with designated representatives of the parties to make arrangements for forthcoming relief missions and road convoys from Croatia and from Serbia and from Montenegro to Sarajevo and also to Banja Luka, Bihac, Bileca, Duboj, Foca, Gorazde, Mostar, Tuzla, Vitec, and Vlasenica. This pattern will be extended to all areas within Bosnia-Hercegovina where humanitarian assistance is required.

d. It was recognised that in addressing the acute problem of the unlawful detention of civilians and the deplorable conditions in which they were held. The primary objective to secure their release and return to their homes. If not immediately feasible, they identified the following possible options in the light of the wishes of those detained and in keeping with the provisions set out at para 3 below:

- repatriation to areas under the control of their respective ethnic authorities;

- choosing to stay temporarily in the area of detention;

- relocation in areas away from the conflict under international supervision;

- temporary refuge in third countries.

e. The international humanitarian agencies will explore urgently with the parties all possible ways to secure the safe release of those detained.

f. In the meantime, the parties undertook to ensure that arrangements are made to ensure that those in detention are cared for and protected, until such time as their safe release is feasible, and accepted that the international community will monitor the situation closely to ensure that the security and well being of those held in detention is assured. To this end, they undertook to give free access to representatives of the international community including the UN, ICRC, EC and CSCE.

g. In light of the need for the immediate evacuation of critical medical cases under ICRC supervision, the parties agreed to arrange security guarantees to permit the use of Banja Luka airport for this purpose. The evacuation would take place with the shortest delay. The parties undertook to identify the names of local commanders/authorities who would make the arrangements with the ICRC delegate. In close coordination with the United Nations, and who would be individually responsible for the safe passage and security of those to be evacuated.

3. In carrying out the Programme of Action, the parties to the conflict undertook to abide by the following provisions:

i) all parties to the conflict are bound to comply with their obligations under International Humanitarian Law and in particular the Geneva Conventions of 1949 and the Additional Protocols thereto, and that persons who commit or order the commission of grave breaches are individually responsible.

ii) all the parties to the conflict have the responsibility to exercise full authority over undisciplined elements within their areas so as to avoid anarchy, breaches of international humanitarian law and human rights abuse.

iii) that refugees and displaced persons should be allowed to return voluntarily and safely to their places of origin.

iv) all practices involving forcible displacement, all forms of harassment, humiliation or intimidation. Confiscation and destruction of property and all acts involved in the practice of ethnic cleansing ar abhorrent and should cease forthwith.

v) there should be unconditional and unilateral release under international supervision of all civilians currently detained.

vi) that the parties to the conflict are responsible for the provision of security and protection for those currently detained until they can be freed under international supervision.

vii) that all such action should be in accordance with the agreement with the parties reached in Geneva on 22 May under auspices of the ICRC.

viii) that the provision of humanitarian assistance should be carried out impartially and on a non-political basis for the benefit of all those affected by the conflict.

The representatives of the Co-Chairmen also noted the following points made by the parties:

a. that humanitarian assistance should be carried out impartially to the benefit of all those in need.

b. that no party can be expected to give guarantees of security on behalf of the other parties to the conflict.

c. that in granting safe access to the international humanitarian organizations there would be a clear understanding that no party would gain military advantage.

Identical copies of this document were signed in London on 27 August 1992 by:

Alija Izetbegovic
President, Presidency of the
Republic of Bosnia and Herzegovina

Radovan Karadzic

Mate Boban